

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(through video conferencing)**

CRM-M-48503-2021
Decided on : 13.12.2021

Sikander Singh Gill

..... Petitioner

Versus

State of Punjab & ors.

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Rohit Samhotra, Advocate
for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab.

Manjari Nehru Kaul, J.(Oral)

The petitioner is seeking quashing of order dated 24.02.2021 (Annexure P-5) and order dated 09.09.2021 (Annexure P-6) vide which the CJM, Ludhiana issued warrants under Section 105-B Cr.P.C. Besides this, prayer has also been made for stay of arrest and all subsequent proceedings including the LOC which has been issued to secure his presence. A prayer has also been made for quashing of the proceedings vide which the passport of the petitioner was ordered to be impounded vide Annexure P-6 dated 09.09.2021.

Learned counsel for the petitioner inter alia contends that the FIR in question came to be registered on account of a marital discord between him and the complainant i.e. his wife wherein she levelled false allegations of physical and mental harassment against him and his family. Learned counsel would further submit that the petitioner had been living in Australia much prior to his marriage on 21.02.2016. After their marriage, the petitioner returned to

Australia, however, unfortunately the complainant wife was refused Visa by the Australian Government. To console his wife and meet his family, when the petitioner returned to India, to his dismay he learnt that his wife was having illicit relations with another man as a result of which the relations between the petitioner and his wife turned sour. Learned counsel submits that the FIR in question came into existence on account of the aforementioned reasons as the relationship of the complainant with another man was exposed. Learned counsel submits that the complainant with an ulterior motive and in active connivance with the police officials had managed to get warrants issued under Section 105-B Cr.P.C. vide order dated 24.02.2021 (Annexure P-5) and also to arm twist the petitioner, got his passport impounded on the basis of warrants under Section 105-B Cr.P.C. Learned counsel has vehemently argued that Section 105-B Cr.P.C. would not be applicable in the case in hand and the Court had exceeded its jurisdiction while issuing warrants of arrest under Section 105-B Cr.P.C. Learned counsel has placed reliance upon ***State of Madhya Pradesh Vs. Balram Mihani and others : 2010(1) RCR (Criminal) 809*** to urge that since the offence allegedly committed by the petitioner was local in nature and allegedly committed within the shores of India, Section 105-B Cr.P.C. would not be applicable to the case in hand. Learned counsel submitted that the Supreme Court had categorically observed that the provisions of Chapter VII-A of Cr.P.C. were applicable to only those offences which had international ramifications for example, terrorist activities and international crimes etc.

Heard learned counsel for the parties and perused the material on record.

No doubt, the provisions of Chapter VII-A of the Code of

Criminal Procedure are applicable to offences having international ramifications such as terrorists activities etc., however, in the case in hand, it cannot be said that the learned trial Court exceeded its jurisdiction while passing the impugned order vide which warrants of arrest of the petitioner were issued for execution in Canada and Australia for an offence under Sections 406 and 498-A IPC. It is a well settled principle of law that mentioning of wrong provision or non-mentioning of provision would not invalidate an order if the Court had the requisite jurisdiction therefor.

It would be relevant to refer to the ratio of law laid down by Hon'ble Supreme Court in the said regard in **P.K Palaniswamy Vs. N. Arunughan and Another (Civil Appeal No.4643 of 2009) decided on 23.07.2009** wherein Hon'ble Apex Court has observed as under:

“13. A contention has been raised that the applications filed by the appellant herein having regard to the decisions of the Madras High Court could not have been entertained which were filed under Section 148 of the Code. Section 148 of the Code is a general provision and Section 149 thereof is special. The first application should have been filed in terms of Section 149 of the code. Once the court granted time for payment of deficit court fee within the period specified therefor, it would have been possible to extend the same by the court in exercise of its power under Section 148 of the Code. Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity.

It is a well settled principle of law that mentioning

of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor.

*In **Ram Sunder Ram v. Union of India & Ors., 2007(3) SCT 742 : 2007(4) RAJ 392 : [2007(9) SCALE 197]**, it was held :*

".....It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law. Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the Learned Counsel for the appellant."

*In **N. Mani v. Sangeetha Theatres & Ors., (2004) 12 SCC 278** , it is stated :*

"9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not

specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."

The aforementioned principle of law was reiterated by the Hon'ble Supreme Court in ***State of Haryana and others vs. Raj Kumar @ Bittu, 2021(3) RCR (Crl.) 724.***

Adverting to the case in hand and in the light of the settled law as laid down by the Hon'ble Supreme Court in P.K.Palaniswamy's case (supra) there can be no manner of doubt that in case the Court is empowered to pass a certain order and in the exercise of such powers an order is passed but under a wrong provision of law or the provision of law is not mentioned under which the said order is passed, it would at best be a mere irregularity and would not in any way render such an order invalid or illegal.

It would be apposite to reproduce Section 105 Cr.PC, which is as under:

“105. Reciprocal arrangements regarding processes.

(1) Where a Court in the territories to which this Code extends (hereafter in this section referred to as the said territories) desires that-

- (a) a summons to an accused person, or*
 - (b) a warrant for the arrest of an accused person, or*
 - (c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or*
 - (d) a search- warrant, issued by it shall be served or executed at any place,-*
- (i) within the local jurisdiction of a Court in any State or area in India outside the said territories, it may send such summons or*

warrant in duplicate by post or otherwise, to the presiding officer of that Court to be served or executed; and where any summons referred to in clause (a) or clause (c) has been so served, the provisions of section 68 shall apply in relation to such summons as if the presiding officer of the Court to whom it is sent were a Magistrate in the said territories;

- (ii) in any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country or place for service or execution of summons or warrant in relation to criminal matters (hereafter in this section referred to as the contracting State), it may send such summons or warrant in duplicate in such form, directed to such Court, Judge or Magistrate, and sent to such authority for transmission, as the Central Government may, by notification, specify in this behalf.

(2) Where a Court in the said territories has received for service or execution-

- (a) a summons to an accused person, or
- (b) a warrant for the arrest of an accused person, or
- (c) a summons to any person requiring him to attend and produce a document or other thing or to produce it, or
- (d) a search- warrant, issued by--

- (i) a Court in any State or area in India outside the said territories;

- (ii) a Court, Judge or Magistrate in a contracting State, it shall cause the same to be served or executed as if it were a summons or warrant received by it from another Court in the said territories for service or execution within its local jurisdiction; and where-

- (i) a warrant of arrest has been executed, the person arrested shall, so far as possible, be dealt with in accordance with procedure prescribed by sections 80 and 81,

- (ii) a search- warrant has been executed, the things found in the

search shall, so far as possible, be dealt with in accordance with the procedure prescribed by section 101:

Provided that in a case where a summons or search warrant received from a contracting State has been executed, the documents or things produced or things found in the search shall be forwarded to the Court issuing the summons or search warrant through such authority as the Central Government may, by notification, specify in this behalf.

Admittedly, in the case in hand, the warrants of arrest were issued by invoking the provisions of Section 105-B Cr.PC but in the wake of provisions of Section 105 Cr.PC, there is no manner of doubt that the Court concerned had indeed been conferred similar powers to issue warrants of arrest, to be executed in a country, wherein the provisions of Code of Criminal Procedure do not extend. It cannot be thus, over-emphasised that only because a wrong provision i.e. Section 105-B Cr.PC was mentioned by the Court below, instead of Section 105 Cr.PC, the same by itself would not be a sufficient enough ground to hold that the order passed would be nullity. The validity of the impugned order would have to be judged on its substance and not on its form.

Still further, learned counsel for the petitioner has failed to satisfy this Court as to what prejudice had been caused to the petitioner by issuance of warrants of arrest under Section 105-B Cr.PC more so, when the Court below did have the powers to issue warrants under Section 105 Cr.PC since the procedure for execution of warrants under both the Sections i.e. 105 Cr.PC and 105-B Cr.PC is same as per the **GUIDELINES ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS** dated

04.12.2019 issued by Ministry of Home affairs.

As a sequel to the above, this Court is not inclined to invoke its inherent jurisdiction under Section 482 Cr.PC to set aside the impugned order dated 09.09.2021 (Annexure P-6). Accordingly, the present petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

13.12.2021
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Whether speaking/reasoned:	Yes
Whether reportable :	Yes