

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-2075-2020

Date of Decision:-07.07.2022

Karam Singh @ Karam Chand.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. J.S. Toor, Advocate for the Petitioner.

Mr. Sidakmeet Singh Sandhu, AAG Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 482 Cr.PC is for the quashing of the impugned order dated 23.07.2017 (Annexure **P-11**) passed by JMIC, Mohali whereby the petitioner has been declared as a proclaimed offender in case FIR No.130 dated 01.05.2001 under Sections 25 of the Arms Act and Section 420 IPC registered at Police Station Phase-1, Mohali, District Ropar (now Mohali) (Annexure **P-1**).

The brief facts of the case as emanating from the petition are that one Industrial Unit in the name of Hasbee Air Gun Factory owned by Sh. Surjit Singh and Sh. Harjit Singh was operating at Plot No.B-11-12, Phase-1 Industrial Area, Mohali. The unit was engaged in the manufacturing of air guns, as well as shot guns having a licence under the Air Weapons Manufacturing Licence No.2/1/72//F19/20/72 GPA II issued by the District

Magistrate, Ropar.

The petitioner was in search of a job and the aforesaid company, outside the factory had displayed a notice for the requirement of Peon and Helper and thereafter upon such notice, the petitioner joined as Peon in the aforesaid factory on 21.08.2000.

Meanwhile an FIR No.130 dated 01.05.2001 was registered under Sections 25 of the Arms Act and Section 420 IPC at Police Station Phase-1, Mohali, (Annexure **P-1**) against the owners of the factory Sh. Surjit Singh, Sh. Harjit Singh, Sh. Harjiv Singh and two workers working at that time in the factory i.e. Ram Singh and Karam Singh @ Karam Chand (petitioner). It was alleged in the FIR that the owners of the factory were manufacturing air guns etc. illegally without having any licence. The petitioner was falsely implicated in the aforesaid case as he was merely working as Peon in the factory and had got nothing to do with the allegations made in the FIR as they were primarily related with the owners of the factory having valid licence for the manufacturing of the guns.

The petitioner was released on bail in the aforesaid FIR by the Chief Judicial Magistrate, Kharar. The petitioner thereafter continuously appeared before the learned Magistrate. However, the Police Authorities did not file any challan in the aforesaid FIR.

Thereafter the Investigating Officer presented a challan before the Ld Judicial Magistrate in the aforesaid FIR on 16.03.2004. The Ld. Judicial Magistrate issued summons to all the accused vide order dated 23.03.2004 for 01.05.2004 and thereafter on 01.05.2004 for 05.06.2004. The Ld. Magistrate on 05.06.2004 recorded that the summons of the accused were received back unserved and the summons were again issued

for 20.08.2004. On 20.08.2004 accused No.1 and 2 i.e. Surjit Singh and Harjit Singh owners appeared and the case was adjourned for 15.12.2004. The Ld. Magistrate on 15.12.2004 issued theailable warrants of the petitioner and Ram Singh for 22.01.2005 Accused Ram Singh appeared on 22.01.2005. Howeverailable warrants were issued to the petitioner for 29.04.2005. Thereafter freshailable warrants of the petitioner were issued vide order dated 07.05.2005 and thereafter on 21.07.2005. The learned Magistrate thereafter issued nonailable warrants to the petitioner vide order dated 05.10.2005, 09.01.2006, 17.03.2006 and 12.06.2006 at the factory address The petitioner was not served on the aforesaid dates and therefore the summons were issued to the petitioner. The Zimini orders pertaining to the aforesaid dates are reproduced hereinbelow:-

16.03.2004

"Challan presented before me being duty Magistrate. Now case be put up before the Illaqa Magistrate on date already fixed i.e. 23.03.04."

23.03.04

"Ld. Presiding Officer is on maternity leave. Accused be summoned for 01.05.04 and notice of application for 01.05.2004."

01.05.2004

"The Ld. PO is on leave today. Now case is adjourned to 5.6.2004 for the purpose already fixed."

05.06.2004

"Summons of the accused received back un-served. Accused be again summoned for 20.08.2004."

20.08.2004

"Accused No.1 and 2 appeared and now an application for surrender and bail. Keeping in view the facts stated therein, both the accused are admitted to bail on furnishing bail bonds in the sum of Rs.50,000/- with one surety of the like amount. Bail bonds and surety bonds are furnished,

accepted and attested. Now remaining accused be summoned for 15.12.04."

15.12.04

"Remaining accused not served. I am satisfied that they cannot be served through ordinary process. Now remaining accused be summoned through bailable warrants for 22.01.05. Consideration on application for release of articles be also made on date fixed."

22.01.05

"Accused Ram Singh also appeared today. For consideration on sapurdari application and accused No.4 be also summoned through bailable warrant for 29.04.2005."

29.04.05

"Fresh B/W of accused Karam Singh be issued for 07.05.05 consideration on application be also made."

07.05.05

"Fresh B/W of accused Karam Singh be made for 21.07.05 and consideration on application be also made."

The Ld. Magistrate issued the summons dated 04.05.2004 to the petitioner again at the factory address i.e B-11-12 Phase-I Industrial Area, Mohali which was returned with the report that the said factory was closed. The summon was again issued on 10.06.2004 at the same address of the factory wherein the report was submitted that the Chowkidar of the factory, Balbir Singh said that Karam Singh does not reside here. The non-bailable warrant was thereafter issued by the Ld. Magistrate on 24.04.2006 at the house No.562 Sector 18-B, Chandigarh which is residential address of Surjit Singh owner of the factory whereupon the report were submitted that they don't know of whereabouts of Karam Chand. The Ld. Magistrate thereafter again issued bailable warrants dated 13.05.2005 at the factory address. The non-bailable warrant was issued by the Ld. Magistrate on

17.06.2006 again at the factory address upon which the report was submitted that Karam Chand has not been residing here for the last 2-1/2 years. The Ld. Magistrate thereafter issued another non-bailable warrant again at the address of factory wherein the report was submitted that the factory is lying closed for around 4-5 years and Chowkidar Balbir Singh submitted that he does not know where Karam Chand is residing. The copy of the aforesaid summons alongwith report dated 04.05.2004, 10.06.2004, 13.05.2005 and non-bailable warrants alongwith report dated 14.10.2005, 24.04.2006 and 17.06.2006 are attached herewith as Annexure P-2 to Annexure P-7.

The Ld. Magistrate, Mohali thereafter vide order dated 06.10.2006 issued notice of proclamation u/s 82 Cr.PC to the petitioner. The order dated 06.10.2006 is reproduced herein below:-

06.10.2006

"File received by transfer. It be registered. I am satisfied that accused Karam Singh cannot be served through an ordinary manner. He be summoned through proclamation u/s 82 Cr.PC and notice to his surety be also issued for 24.01.07."

24.01.2007

"Fresh proclamation of accused Karam Singh and notice to his surety be also issued for 30.04.2007."

30.4.2007

"Accused on bail except accused Karam Singh.

Fresh proclamation of the accused Karam Singh and Notice to his surety be issued for 23.7.07."

The copy of proclamation notice dated 24.05.2007 issued u/s 82 Cr.P.C. is attached herewith as Annexure P-8.

The proclamation notice issued vide order dated 30.04.2007

was effected by Tarsem Singh, Summon Staff, Mohali at the factory address as per the report dated 27.05.2007. Tarsem Singh recorded his statement before the Ld. Trial Court on 23.07.2007 regarding the proclamation notice effected at B-11-12 Industrial Area, Phase-I Mohali. The copy of the report dated 27.05.2007 and statement recorded by Trasem Singh, Summon Staff Mohali dated 23.07.2007 are attached as Annexure **P-9 & P-10**.

The learned JMIC in view of the report and statement made by Tarsem Singh declared the petitioner as proclaimed offender vide its order dated 23.07.2007. The copy of the order dated 23.07.2007 is attached herewith as Annexure **P-11**.

After the issuance of notice in the present petition, reply dated 13.03.2020 was filed by way of affidavit of Mr. Ashwini Gotyal, ASP, City-1, Mohali on behalf of the respondent.

A perusal of the reply would reveal that the factual assertions in the petition have been broadly accepted. In fact as per the reply the proclamation notice was effected at the factory address of the petitioner (where he was working as Clerk). There is no specific response to the averment of the petitioner that he was a permanent resident of Himachal Pradesh, a fact which was known to the investigating agency but yet all proceedings upto petitioner being declared a proclaimed offender had taken place either at the factory address in Mohali or the residential address of the owners of the factory. The State has also opposed the quashing of the order on the grounds that the present petition has been filed with a considerable delay as the petitioner had been declared a proclaimed offender vide order dated 23.07.2007 and the present petition came to be filed only in January 2020. Thus dismissal of the petition is sought.

The learned Counsel for the petitioner contends that the proper procedure as envisaged under Section 82 Cr.PC has not been followed while declaring the petitioner a proclaimed offender. The Authorities were aware that the petitioner had recorded his permanent resident address as village Bani Kothi, Police Station and District Hamirpur, Himachal Pradesh with the police authorities as well as with the court but the summons, warrants and proclamation notice had been served repeatedly at the factory address i.e. B-11-12, Indl. Area, Phase-1, Mohali where the petitioner had been working as Peon at the time of registration of FIR or at the residential address of the owners i.e. # 562 Sector 18-B, Chandigarh. He thus contended that the trial Court had wrongly declared the petitioner as a proclaimed offender having not considered the fact that all communications upto the petitioner being declared proclaimed offender were at the factory address/residential address of the owners. It is further contended by the learned Counsel for the petitioner that in the proceedings pending against the co-accused a supplementary report had been submitted that no offence had been made out against the accused. In fact on an application for discharge having been moved the learned JMIC, Mohali considering the said application for discharge found that no offence was made out against the accused persons, discharging all the accused from the case vide order dated 03.11.2009 (Annexure P-13). Even otherwise the petitioner was under the bonafide belief that the police authorities had not filed any challan and the case stood cancelled. Regarding the delay in filing the present petition it is contended that the petitioner who was working as Clerk of an advocate was made aware of the proceedings pending against him only on 28.12.2019 when he received a call from the Sarpanch of village Bani

Kothi, Police Station and District Hamirpur, Himachal Pradesh that the police official of Phase-1 Mohali Police Station were seeking his custody. It was thus contended that on the one hand proceedings against the petitioner leading to his declaration as a proclaimed offender took place at a premises where the petitioner had not resided for years whereas on the other hand the main accused already stood discharged. It was thus prayed that the order Annexure P-11 may be quashed.

The learned Counsel for the State has while relying upon the reply stated that the petitioner was rightly declared as a proclaimed offender after following the property procedure and thus there was no merit in the petition which ought to be dismissed.

I have heard learned Counsel for the parties at length.

Admittedly, the petitioner had been appearing continuously before the learned Magistrate on every date uptill the filing of the challan. It is also not in dispute that the petitioner was a peon working in the factory premises of the main accused and as such the permanent address of the petitioner could never have been that of the factory. In fact, a perusal of Annexure P-8 which is the proclamation under Section 82 Cr.PC as also Annexure P-10 which is the affixation of the notice would show that the permanent address of the petitioner is mentioned as Village Bani Kothi, Police Station and District Hamirpur, Himachal Pradesh presently working at B-11-12, Industrial Area, Phase-1 Mohali. Thus, it is apparent that the Authorities were aware of the permanent address of the petitioner but for reasons best known to them sent all the summons (Annexure P-2 to P-7) to the factory address/residential address of the owners of the factory.

Further so far as the main case is concerned the co-accused of

the petitioner already stand discharged vide order dated 03.11.2009 (Annexure P-13).

In view of the aforementioned discussion it is apparent that the proper procedure as envisaged under Section 82 Cr.PC has not been followed while declaring the petitioner a proclaimed offender. Resultantly, the present petition is allowed and order dated 23.07.2007 Annexure P-11 whereby the petitioner has been declared a proclaimed offender is hereby quashed.

(JASJIT SINGH BEDI)
JUDGE

July 07, 2022
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No