

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

123+282

CRM-M-7781 of 2022 (O&M)

Date of decision:21.07.2022

Kuldeep Singh

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Saurav Bhatia, Advocate
for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab.

Mr. Ramanpreet Singh, Advocate
for respondent No.2.

SUVIR SEHGAL, J. (Oral)

CRM No.25351 of 2022

Application is allowed as prayed for.

Annexures P-12 and P-13 are taken on record.

CRM-M-7781 of 2022

Instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “the Code”), for quashing of order dated 05.05.2018 (Annexure P-8) passed by learned Chief Judicial Magistrate, SBS Nagar in FIR No.56 dated 15.07.2017 lodged for offences under Sections 406, 498-A of Indian Penal Code, 1860 at Police Station Sadar Banga, District Shaheed Bhagat Singh Nagar (Annexure P-1), vide

which the petitioner was declared as Proclaimed Person and all consequential proceedings.

Counsel for the petitioner submits that FIR, Annexure P-1, is an outcome of a matrimonial dispute, which was lodged when the petitioner was not in India. By referring to passport, Annexure P-2, counsel for the petitioner submits that the petitioner left India on 19.12.2013 and has been in Australia, throughout. Counsel submits that warrants issued to the petitioner were received back with the report dated 12.03.2018 (Annexure P-4) that “.....I know Kuldeep Singh very well who is not at the house and about 4-5 years ago had gone abroad and it is not certain when he will come back.” It is his specific case that despite fact that he was not in the country, no attempt was made to serve him through the Ministry of External Affairs. He urges that the petitioner has been declared as Proclaimed Person without following the mandatory procedure prescribed under Section 82 of the Code. Still further, he submits that the matrimonial dispute has been settled, marriage has been dissolved by judgment and decree dated 16.05.2022 (Annexure P-12) and a separate petition has been instituted for quashing of FIR on the basis of compromise in which statements of the parties have been recorded. It is also his submission that in compliance of the interim order dated 15.03.2022 passed by this Court, the petitioner has deposited cost of Rs.30,000/-.

State counsel has opposed the petition by placing reliance upon the reply filed by way of an affidavit of Deputy Superintendent of Police,

Sub Division Nawanshahr, District SBS Nagar.

Heard counsel for the parties.

The admitted position is that the petitioner was not in India when the FIR was registered by his estranged wife. Warrants issued to the petitioner were received back with the report that he is abroad. The learned Magistrate, therefore, erred in initiating process under Section 82 of the Code without adopting other coercive measures provided in the Code to serve the petitioner and secure his presence. Not only this, as per the statement, Annexure P-6, of the serving officer, proclamation issued under Section 82 of the Code for appearance of the petitioner on 30.04.2018 was affixed outside of his house at the native village on 02.04.2018. As the mandatory period of 30 days had not lapsed, learned Magistrate by order dated 30.04.2018, Annexure P-7, postponed the proceedings to 05.05.2018, when the impugned order has been passed. It is, therefore, apparent that a clear notice of 30 days was not given. Mere fact that the Court adjourned the proceedings for completion of the mandatory period, cannot be taken to the compliance of Section 82(1) of the Code. Accordingly, the proceedings initiated under Section 82 as well as order, Annexure P-8, declaring the petitioner as a Proclaimed Person are liable to be set aside.

In view of the above discussion, coupled with the fact that the criminal proceedings have arisen due to a marital discord and the parties have decided to give a quietus to the matrimonial dispute, this Court has no hesitation in setting aside the impugned order.

Accordingly, petition is allowed and order dated 05.05.2018 (Annexure P-8), whereby, the petitioner has been declared as Proclaimed Person is set aside and all consequential proceedings arising therefrom, are set aside.

July 21, 2022

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(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes