

CRM-M-39903-2021

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(THROUGH VIDEO CONFERENCING)

CRM-M-39903-2021

Date of decision : 8.2.2022

Jaswinder Singh

... Petitioner

VERSUS

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Sarju Puri, Advocate,
for the petitioner.

Mr. B.S.Sewak, Addl. AG, Punjab.

KARAMJIT SINGH, J.

Present petition under Section 482 Cr.P.C. has been filed by the petitioner seeking quashing of order dated 11.1.2016 (Annexure P-1) passed by learned JMIC, SBS Nagar whereby the proclamation against the petitioner under Section 82 Cr.P.,C. was issued and order dated 1.3.2016 (Annexure P-2) whereby the aforesaid Court declared the petitioner as proclaimed person in criminal case having FIR No.68 dated 6.,7.2013 registered under Sections 353, 186, 332, 148, 149 IPC and Section 3 of Prevention of Damage to Public Property Act, 1984 at Police Station Sadar Nawanshahr, District SBS Nagar.

On notice of motion, reply by way of affidavit of Davinder Singh, Deputy Superintendent of Police, Nawanshahr Sub Division, SBS Nagar was filed on behalf of the State.

Counsel for the petitioner has submitted that FIR in the present case was registered against unidentified persons and subsequently, the petitioner was arraigned as accused in the present case. The petitioner was

having no knowledge regarding the pendency of any such case as challan was not presented in his presence in the Court concerned. Even the petitioner was not available in India as he had gone to Spain and even now the petitioner is residing in Spain and has filed the present petition through his attorney Bhajan Kaur who is his mother.

Counsel for the petitioner further contended that the impugned orders are totally illegal being passed in violation of the provisions of Section 82 of Cr.P.C. as well as the settled law. In support of his argument, counsel for the petitioner referred to CRM-M-53893-2007 titled Kashmir Ram v. State of Punjab decided on 1.9.2008 wherein the proceedings under Section 82 Cr.P.C. were quashed as the petitioner was not residing in India and no attempt was made to serve summons to him through Ministry of External Affairs before proceeding against him under Section 82 Cr.P.C.

On the other hand, counsel for the State contended that there is no illegality in the impugned orders which were passed by the learned trial Court as per procedure provided under Section 82 Cr.P.C.. Counsel for the State further made prayer that the present petition deserves to be dismissed being devoid of merits.

I have considered the submissions made by the counsel for the parties.

From the perusal of the order dated 11.1.2016 (Annexure P-1), it is clear that the trial Court received report that the petitioner (accused) was living abroad and consequently, a direction was given to issue proclamation against the petitioner for 4.2.2016. The said proclamation was received after due execution as is evident from order dated 4.2.2016 passed by the learned trial Court. As the statutory period of 30 days had not lapsed,

the trial Court adjourned the case to 1.3.2016 for awaiting presence of the petitioner. Finally, on 1.3.2016, as none appeared on behalf of the petitioner, he was declared as proclaimed person by the trial Court. Thus, it is clear in the present case that period of less than 30 days was given to the petitioner from the date on which written proclamation was published as per which the petitioner was to appear in the Court on 4.2.2016. Further adjournment granted by the trial Court vide order dated 4.2.2016 whereby the case was posted to 1.3.2016 just to complete the statutory period of 30 days, cannot be treated as compliance of the provisions of Section 82(1) Cr.P.C., as has been held by this Court in CRM-M-13638-2013; Ashok Kumar v. State of Haryana and another decided on 5.8.2013.

Also from the perusal of order dated 11.1.2016 (Annexure P-1), it stands proved that at the relevant time, the petitioner was residing in foreign country. In the present case, no attempt was made by the Court concerned to serve summons to the petitioner through Ministry of External Affairs. Even proclamation was not got published in any newspaper. Delhi High Court in Sunil Kumar v. State, 2002 (1) RCR (Criminal) 119 and this Court in Kashmir Ram's case (supra) held that when the accused is residing in foreign country and no attempt is made to serve summons through Ministry of External Affairs, order of proclamation of the accused is liable to be set aside.,

In view of above circumstances, the present petition is allowed and the impugned order declaring the petitioner as proclaimed person is hereby set aside.

February 8, 2022
Paritosh Kumar

(KARAMJIT SINGH)
JUDGE