

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.115

CRM-M-38014-2022

Date of decision : 11.10.2022

Narinder Kaur

.....Petitioner(s)

VERSUS

State of Punjab and others

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.HS Randhawa, Advocate for the petitioner

AMAN CHAUDHARY, J.

Present petition has been filed under Section 482 of the Code of Criminal Procedure for setting aside the order dated 9.1.2020, Annexure P-4, passed by learned Chief Judicial Magistrate, Kapurthala vide which the petitioner was declared as proclaimed person in case FIR No. 194 dated 6.8.2018, registered under Sections 337, 338, 304-A, 279, 427 IPC at Police Station City Kapurthala.

Learned counsel for petitioner contends that the FIR was lodged against the petitioner on 6.8.2018 at the instance of one Amrik Singh with the allegation that his cousin, namely, Paramdeep Singh s/o Surinderjeet Singh had met with an accident, in which he received injuries and later on, he succumbed to the same. Thought, the petitioner was not named in the FIR but her name surfaced during the investigation in the case. He further submits that she was granted bail by the learned trial Court vide order dated 11.8.2018, whereafter, she appeared before the trial Court before leaving for Canada on 8.6.2019. Due to her non-appearance in the

case, proclamation proceedings were initiated against her under Section 82 Cr.P.C. and she was declared proclaimed person on 9.1.2020, Annexure P-4. He further submits that the proclamation was not properly carried out. He refers to Annexure P-2, the statement of the Chowkidar, who is stated to have pasted a copy of notice on the door of the house of the petitioner. He further refers to Section 82 Cr.P.C. to contend that no proclamation was read in the conspicuous place of town or village. To buttress his submission, he places reliance on the judgments of Coordinate Benches of this Court in **Gurbir Singh Mundi vs. State of Punjab and another** CRM-M-49283-2021, decided on 16.12.2021, **Hardev Kaur vs. State of Punjab** 2018(2) Law Herald 1256 and **Jasbir Kaur vs. State of Punjab and another**, CRM-M-25115-2022, decided on 2.6.2022.

Learned counsel further contends that the matter between the petitioner and the complainant as well as the widow of the deceased has since been compromised, with regard to which, he refers to their affidavits, Annexures P-5 and P-6, attached with the petition with a specific reference to para 4 thereof, which reads thus:-

“4. That I shall have no objection if the court grants bail to accused Narinder Kaur in above said case, set aside the order declaring her P.O., acquit her or quash the case against her.”

Learned counsel submits that the absence of the petitioner was not willful or deliberate but was for the reasons aforesaid, thus, it is stated that she is ready and willing to surrender before the trial Court, for which only one opportunity is prayed for, which may even be subject to payment of costs.

Notice of motion.

At the asking of the Court, Mr.Manipal Singh Atwal, DAG, Punjab accepts notice on behalf of respondent No.1. He states that it was well within the knowledge of the petitioner that proceedings of proclamation were initiated against her, still she did not make any effort to join the proceedings. He, however, has not been able to controvert the fact that in Annexure P-2, the statement of the Chowkidar, it has not been mentioned that it was publicly read, however, he states that perhaps, the same may have been mentioned in the report.

At this stage, Mr.Hargun Sandhu, Advocate puts in appearance and accepts notice on behalf of respondent No.2. He affirms the factum of execution of affidavits Annexures P-5 and P-6 as the matter stands compromised between the parties and that respondent No.2 has no objection for setting aside of the order declaring the petitioner a proclaimed person.

The submissions advanced by learned counsel for the parties have been heard.

In the case of **Gurbir Singh Mundi** (supra), it was held that provisions of Section 82(2) Cr.PC. are to be mandatorily complied with cumulatively and not alternatively. The Court had quashed the order declaring the petitioner therein as proclaimed person on the ground that declaration was not read publicly in some conspicuous place of town or village, in which the accused ordinarily resides.

In re: **Hardev Kaur's** case (supra) , the order of proclamation was set aside in a case, where the compromise between the parties had been arrived at and no objection had been given by the complainant for setting aside the same.

In the case of **Jasbir Kaur** (supra), since the petitioner therein was a Non Indian Resident lady residing in Canada and proclamation proceedings had been initiated while she was not in India, as such, the order of proclamation was set aside.

The very purpose of issuance of non-bailable warrants, is to secure the presence of the accused to face trial and establish the rule of law, so as to ensure finalization of the proceedings.

In the case in hand, the explanation offered by the petitioner for her non-appearance before the appellate Court seems to be justified. It cannot be construed as a deliberate and willful absence. Moreover, the matter has since been amicably settled between the parties.

This Court in **Major Singh vs. State of Punjab**, CRM-M-3649-2022, decided on 15.9.2022, in somewhat similar circumstances, while setting aside the order, observed thus:

“This Court while noticing the *bonafide* of the petitioner; explanation given for his absence being justified; the object to be achieved being to secure the presence of the petitioner in the proceedings; expedition of trial and its early culmination being in the interest of the parties; in order to meet the ends of justice; judgments referred to above being applicable to the instant case, is allowing this petition, though deeming it appropriate to impose certain conditions for meticulous adherence at the hands of the petitioner.

In view of the forgoing conclusion and in the peculiarity of the facts and circumstances of the case, as also held by the Coordinate Bench of this Court in the cases of **Naveen Rao** (supra) and **Dimple Kumar** (supra) and in the interest of justice, the impugned order

dated 19.7.2022, Annexure P5, is hereby set aside.”

In view of the facts and circumstances of this case and the judgments referred to above, the impugned order dated 9.1.2020, Annexure P-4, is set aside, subject to deposit of Rs.10,000/- with the Punjab and Haryana High Court Bar Association Advocates' Welfare Fund. The petitioner is directed to surrender before the trial Court on or before 10.1.2023 and furnish her fresh bail/ surety bonds. On so doing, the trial Court shall release her on bail by imposing heavy surety to its satisfaction. She is also directed to furnish an undertaking by way of her affidavit that she will appear on each and every date of hearing before the trial Court, unless specifically exempted by the Court.

Before parting with this order, it is made abundantly clear that in case the petitioner does not adhere to the aforesaid, the present petition shall be deemed to have been dismissed without any reference to this Court.

11.10.2022
gsv

(AMAN CHAUDHARY)
JUDGE

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