

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52599-2021
Date of decision: 12.01.2022

Balbir Singh son of Jaswant
...Petitioner

Versus

Balbir Singh son of Makhan Singh & another
...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. B.S. Bhalla, Advocate
for the petitioner.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

ANOOP CHITKARA, J.

Complaint No.	Dated	Sections
90	01.12.2010	420, 467, 468, 471, 120-B IPC

The petitioner-accused being aggrieved against the order dated 03.09.2016 (Annexure P-6) passed by Additional Chief Judicial Magistrate, Barnala, whereby he has been declared as a proclaimed offender, has come up before this Court seeking its quashing.

The petitioner is arraigned as an accused in the case captioned above. Vide order dated 02.06.2012 (Annexure P-4), Judicial Magistrate Ist Class, Barnala took cognizance of offences and proceeded against the petitioner-accused for aforesaid offences. After that, the accused could not be served. Subsequently, vide order dated 03.09.2016 (Annexure P-6), learned Additional Chief Judicial Magistrate, Barnala declared the petitioner-Balbir Singh as proclaimed offender.

A perusal of the impugned order reveals that the complainant had made a statement to the concerned Court that he has compromised the matter with one of the accused Jaswinder Singh and also requested for dismissal of the complaint as withdrawn. Based on said statement, learned Additional Chief Judicial Magistrate ordered that the case file be consigned to the record room and ordered it to be taken up as and when accused appears/surrenders before the Court.

Challenging the aforesaid order, the petitioner has filed the present petition under Section 482 CrPC. It has been mentioned in paragraph no.6 of the petition that the summoning order was issued on 02.06.2012 whereas the petitioner had already left India on 30.05.2011 i.e. prior to the issuance of summons. To corroborate his pleadings, the petitioner has annexed copies of his passport Annexure P-5, which reveals that the petitioner had reached Canada on 31.05.2011.

Section 82 CrPC reveals that in order to issue proclamation for an absconding person, that person should be willfully evading service of summons and for that reason, the summons are to be affixed in a specified space where he ordinarily resides. In the present case, *prima facie* it is established that when the order dated 02.06.2012 was passed, the petitioner was not residing in India and was in Canada.

The State has not disputed the authenticity of copies of passport Annexure P-5.

Given, above, the petition is allowed. The order dated 03.09.2016 (Annexure P-6) passed by Additional Chief Judicial Magistrate, Barnala is hereby quashed.

(ANOOP CHITKARA)
JUDGE

January 12, 2022
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	No