

CRM-M-53614-2021

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

**CRM-M-53614-2021
Date of decision:25.04.2022**

Partap Singh

...Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Aditya Jain, Advocate,
for the petitioner.

HARNARESH SINGH GILL, J. (ORAL)

Challenge in the present petition is to the order dated 04.01.2016 (Annexure P-4) passed by the learned Additional Chief Judicial Magistrate, Palwal, in case bearing complaint No.831/2014 dated 23.12.2013, titled as 'Badam Singh Vs. Govind and others', whereby the petitioner was declared a proclaimed person.

Learned counsel for the petitioner contends that the petitioner went to Australia in February, 2014, for higher education, as would decipher from the visa and the passport (Annexures P-9 and P-10, respectively); that the petitioner was summoned in the above-mentioned complaint, vide order dated 30.03.2015 passed by the learned Addl. Chief Judicial Magistrate, Palwal, and that vide order dated 16.07.2015 (Annexure P-3), it was specifically noticed that theailable warrant issued to the petitioner received back with the report that he had gone to Australia for higher study. The learned counsel further contends that the

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proclamation proceedings had been initiated against the petitioner when he was abroad. It is also submitted that the petitioner is also working in Australia on work visa after completion of his study. He further contends that while declaring the petitioner a proclaimed person, the provisions of Section 82 Cr.P.C. have not been adopted.

Learned counsel for the petitioner further contends that during the pendency of the above-noted complaint, the matter was compromised between the parties and in pursuance thereof, the complaint was dismissed as withdrawn, vide order dated 16.07.2021 (Annexure P-7). In support of his contentions, the learned counsel relies upon the judgment dated 07.05.2019 passed by a Coordinate Bench in CRM-M-11269-2019, titled as 'Aditya Goyal Vs. State of Haryana'.

Notice of motion.

On the asking of this Court, Mr. Ashok Singh Chaudhary, Addl. A. G. Haryana, accepts notice on behalf of respondent No.1-State.

At this stage, Mr. Arjun Kundra, Advocate, puts in appearance on behalf of respondent No.2 and does not dispute the fact that the compromise was effected between the parties and in pursuance thereof, the above-noted complaint was dismissed as withdrawn. He also submits that he has no objection, if the impugned order is set aside.

I have heard the learned counsel for the parties.

A perusal of the record would show that the petitioner shifted abroad in February, 2014, but the impugned order declaring the petitioner a proclaimed person was passed on 04.01.2016. The bailable warrant issued against the petitioner was received back with the report that he had gone to

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Australia for his study. However, the trial Court overlooked the said aspect while passing the impugned order. It was the duty of the Magistrate concerned to ensure that the accused sought to be declared a proclaimed person, had been served with a notice or at least the police had made sincere efforts to intimate the accused of pending criminal complaint against him. As such, the procedure prescribed under Section 82 Cr.P.C., was not followed in letter and spirit before declaring the petitioner a proclaimed offender.

The objective of the coercive mechanism prescribed under the Code of Criminal Procedure is to ensure that the accused remains present before the Court to receive the orders and judgments. Moreover, during the pendency of the main complaint, the matter was amicably settled between the parties and in pursuance thereof, the complaint was dismissed as withdrawn on 16.07.2021. As such, the presence of the petitioner is not required in the complaint case.

In view of the above discussion, the present petition is allowed and the impugned order dated 04.01.2016 (Annexure P-4) is set aside.

25.04.2022

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No