

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

Sr. No.118

CRM-M-49863-2022

Date of decision : 31.10.2022

Parminder Kaur Motay

.....Petitioner(s)

VERSUS

State of Punjab and another

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY**Present:** Mr. Vinay Puri, Advocate for the petitioner.

AMAN CHAUDHARY, J.

The present petition under Section 482 Cr.P.C. has been filed seeking quashing of the order dated 22.09.2020, Annexure P-2, passed by Chief Judicial Magistrate, Moga vide which the petitioner has been declared proclaimed offender in case FIR No.11 dated 23.01.2017 under Sections 420 and 120-B IPC.

Learned counsel submits that petitioner and respondent No.2 got married on 06.09.2014. Thereafter, on 25.08.2015, the petitioner left for Canada on a study visa. It is his further submission that since then the petitioner returned to India only once on 19.05.2016 and again left on 22.05.2016, a reference in this regard was made to her passport, Annexure P-3, to fortify the said submission.

Learned counsel has submitted that a matrimonial dispute between the two ensued, leading to lodging of the FIR in question on 23.01.2017.

He further submits that vide order dated 22.09.2020, Annexure P-2, the petitioner was declared a proclaimed person. It is his submission that proper procedure as envisaged under Sections 41, 105 and 82 Cr. P.C. was not followed, inasmuch as she was residing in Canada since 2015, the service ought to have been effected through the Indian Embassy. He draws the attention of this Court to the provision of Section 105 of Criminal

Procedure Code (Cr.P.C) that provides for the procedure to serve summons and warrants to accused residing outside India. A further reference is made to a Notification issued by the Government of India Ministry of Home Affairs, IS Division-II:Legal Cell New Delhi, dated the 11th Feb, 2009, laying down comprehensive guidelines in this regard of reciprocal arrangements to be made by Central Government with the Foreign Governments with regard to the service of summons/warrants/judicial processes. The Ministry of Home Affairs has entered into Mutual Legal Assistance Treaty/Agreements with 22 countries which provide for serving of documents. These countries are Switzerland, Turkey, United Kingdom, Canada, Kazakhstan, United Arab Emirates, Russia, Uzbekistan, Tajikistan, Ukraine, Mongolia, Thailand, France, Bahrain, South Korea, United States of America, Singapore, South Africa, Mauritius, Belarus, Spain and Kuwait. To fortify his submissions, learned counsel for the petitioner places reliance on the judgments of this Court in CRM-M-49283-2021 titled **Gurbir Singh Mundi vs. State of Punjab and another**, decided on 16.12.2021, **Hardev Kaur Vs. State of Punjab**, 2018 (2) Law Herald 1256 and CRM-M-25115-2022, titled as **Jasbir Kaur Vs. State of Punjab and another**, decided on 2.6.2022 and CRM-M-38014 of 2022 titled as **Narinder Kaur Vs. State of Punjab and others** decided on 11.10.2022 and CRM-M-32011-2018 titled as **Jaswant Singh vs. State of Punjab and another**, decided on 6.2.2020, order dated 24.09.2021 passed in SLP (Crl.) No.7072 of 2021 filed by the above petitioner-Jaswant Singh, judgment dated 20.10.2021 in Criminal Appeal no. 1233 of 2021 (SLP (Crl.) No.7072 of 2021), which was allowed.

It is his further submission that as a matter of fact the dispute stands compromised between the parties and a deed dated 12.11.2021, Annexure P-4 has been executed between them. Respondent No.2 affirming the same, has sworn in, an affidavit dated 7.10.2022, Annexure P-5. In pursuance thereto, he has also filed a divorce petition under Section 13-B of the Hindu Marriage Act before the Court of Dr. Mandeep Mittal, Additional Family Court, Ludhiana and the first motion statement of respondent No.2 as well as the petitioner through an attorney i.e. her father Sh. Lakhvir Singh was recorded on 10.10.2022. He submits that the petitioner is travelling to India on 31.10.2022, for which, he makes a reference to her air ticket,

Annexure P-6. He further submits that based on the aforesaid compromise dated 12.11.2021, the FIR in question has also been quashed qua the father of the petitioner-Lakhvir Singh, brother and sister-in-law of the petitioner by this Court vide order dated 25.02.2022, Annexure P-7, passed in CRM-M-150 of 2022, Annexure P-7. It is his submission that the petitioner is ready and willing to surrender before the Court concerned for which only one opportunity is being sought, which may even be subject to costs.

In addition thereto the learned counsel for the petitioner submits that she has also filed CRM-M No.50117 of 2022 seeking quashing of the FIR in question, on the basis of compromise, which stands quashed qua the other co-accused by this Court. The said petition is also listed before this Court today. He further submits that the petitioner is travelling to the country and shall reach on 01.11.2022, in order to surrender before the Court concerned and if directed, she is ready to make a statement in the proceedings seeking quashing of the FIR in question, that the dispute has since been amicably resolved. Learned Counsel submits that in view of the impugned order having been passed against the petitioner, she is apprehending her arrest on reaching India and prays that till the time she surrenders before the Trial Court, her arrest may be stayed, in light of the order dated 06.02.2020 passed by this Court in the case of **Jaswant Singh** (supra).

Notice of motion.

Mr. Manipal Singh Atwal, DAG, Punjab accepts notice on behalf of respondent State and seeks time to file reply and Mr. Mandeep Singh, accepts notice on behalf of respondent No.2-complainant.

Learned counsel for the complainant affirms the facts as stated by the learned counsel for the petitioner and has no objection to the prayer being allowed in this case.

Heard.

The petitioner and respondent No.2 are stated to have got married on 06.09.2014 in India. The averments made in the petition and submissions to the effect that the petitioner had left the country on a student visa on 25.8.2015, are substantiated from her passport, Annexure P-3. Their relations having turned sour thereafter, led to lodging of FIR in question, on

23.1.2017, Annexure P-1, behind her back. The proceedings declaring the petitioner as proclaimed person were initiated against her and she was declared a proclaimed person vide order dated 22.9.2020, Annexure P-2. There is nothing on record to show that procedure as contemplated by the provisions of Section 105 CrPC was adopted for effecting service upon the petitioner in the proceedings, that culminated in she having been declared as a proclaimed person.

It is apposite to make a reference to the judgment of this Court in the case of **Jasbir Kaur** (supra), since the petitioner therein was a Non Indian Resident residing in Canada and proclamation proceedings had been initiated while she was not in India, as such, the order of proclamation was set aside.

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

In re: **Narinder Kaur's** case (supra), wherein the dispute had been compromised between the parties, this Court ordered the petitioner, who was declared a proclaimed person while she was living abroad, to surrender before the trial Court, upon which she was to be released on bail.

Similarly, in the case of **Jaswant Singh** (supra), this Court in the interim order dated 10.9.2018, noticed the submission made by the counsel for the petitioner relying on the photocopy of the passport (Annexure A-1) that the petitioner was not in India at the time of registration of FIR on 29.10.2009, as well as, on the day, when he was declared proclaimed offender vide order dated 28.4.2014 and even on the date of passing of the above order, as he was in Italy, directed him to surrender before the trial Court, upon which interim bail was ordered to be granted to him. This Court vide order dated 6.2.2020 though declined the prayer for quashing of FIR made in the petition, but, with regard to the order declaring him a proclaimed offender, directed him to surrender before the trial Court and file an application for regular bail, however, till then he was ordered to be not arrested. He however challenged the said order inasmuch as this Court had declined his prayer for quashing of the FIR, wherein Hon'ble The

Supreme Court of India vide an interim order dated 24.09.2021 passed in SLP (Crl.) No.7072 of 2021, ordered not to take coercive steps against him. Subsequently, vide judgment dated 20.10.2021, the Criminal Appeal no. 1233 of 2021(SLP(Crl.) No.7072 of 2021) was allowed and FIR was quashed, in para 8 whereof it was mentioned that, he had surrendered on 27.10.2018, whereafter he was admitted to interim bail.

The very purpose of issuance of summons, warrants, taking out proceedings of proclamation etc. is to compel and secure the presence of the accused to face trial and establish the rule of law so as to ensure finalization of the proceedings.

Adverting to the facts of the present case, the proclamation proceedings without effecting service upon the petitioner, who was residing abroad, were not justified. However, still it is incumbent upon her to join the proceedings, for the culmination of the same. Considering the fact that the absence of the petitioner being not willful or deliberate and her readiness and willingness to surrender; for which she is stated to be travelling to India; the dispute between the parties also having been compromised; based on which, even the FIR in question, qua other co-accused, i.e. her father and other family members, stands already quashed by this Court and a similar petition filed by the petitioner is pending; the fact that even the first motion statements of the petitioner made through her father, as her attorney holder and of the complainant-respondent No.2 have also been recorded on 10.10.2022, in the divorce petition filed by him; counsel for respondent No.2, who has caused appearance in the present matter, has also affirmed all the facts as stated by the learned counsel for the petitioner, to be correct; has given his no objection to the prayer made in the present petition, thus, no prejudice shall be caused to any of the parties, in case the petitioner is granted one opportunity, to surrender before the trial Court. Therefore, in order to secure the ends of justice and finding judgments referred to above, being applicable to the instant case, the present deserves to be allowed.

In view of the peculiarity of the facts and circumstances of this case and the judgments referred to hereinabove, consequently and as a sequel thereto, the present petition is allowed. The impugned order dated 20.9.2020, Annexure P-2, is set aside, subject to deposit of Rs.25,000/- with

the Poor Patients Welfare Fund, PGIMER, Chandigarh, <https://pgimer.edu.in/>. The petitioner is directed to surrender before the trial Court on or before 4.11.2022 and furnish her fresh bail/surety bonds. On so doing, the trial Court shall release her on bail by imposing surety to its satisfaction. Till then, no coercive steps be taken against the petitioner.

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

(AMAN CHAUDHARY)
JUDGE

October 31, 2022
rimpal

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