

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

117

CRM-M-58659-2022 (O&M)
Date of decision: 16.12.2022

PAWANDEEP KAUR

....Petitioner(s)

Versus

STATE OF PUNJAB

Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sukhjit Singh, Advocate
for the petitioner.

AMAN CHAUDHARY. J.

Present petition has been filed for quashing of PO/proclaimed person order dated 01.10.2014 passed by Judicial Magistrate Ist Class, Moga against the petitioner in FIR No.23 dated 05.10.2013 registered under Section 406, 420 and 120-B IPC registered at Police Station NRI Moga and all other consequential proceedings arising therefrom.

Learned counsel for the petitioner contends that the petitioner was married to complainant and however since the complainant could not be called abroad, alleging fraud, he lodged an FIR against the petitioner while she was abroad. To substantiate the aforesaid factum the copy of passport has been appended as Annexure P-3 to show that petitioner lastly visited in India in the year 2009 and left for Canada in the year 2010 and has thereafter never returned. It is his submission that co-accused Hardeep Singh and Jaspreet Kaur, father and maternal aunt of the petitioner, who were in India, have faced the trial and were acquitted vide judgment dated 18.08.2018 Annexure P-4. The said judgment was

taken up in appeal, whereupon the same was dismissed. It is his further submission that the proclamation proceedings had been initiated behind the back of the petitioner and she was declared proclaimed person by the trial Court vide order dated 01.10.2014, Annexure P-2. He further submits that the procedure as envisaged under Sections 41, 105, and 82 Cr.P.C. has not been followed for summoning the petitioner as she was residing in Canada, thus the proclamation proceedings being in violation thereof are liable to be set aside. 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 submits that non-appearance of the petitioner before the trial Court in the proceedings is neither willful nor deliberate but for reasons aforesaid. He prays for one opportunity to be granted to her to appear and surrender before the trial Court. Learned counsel for the petitioner states that he has instructions from the petitioner is arriving in India in the first week of January and tickets have been booked and she shall join the proceedings as and when directed by this Court.

Notice of motion.

Mr. Manipal Singh Atwal, DAG Punjab accepts notice on behalf of the respondent-State.

Heard.

In the case of **Gurbir Singh Mundi** (supra), it was held that provisions of Section 82(2) Cr.P.C. 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 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.

This Court in **Parminder Kaur Motay Vs. State of Punjab and another**, CRM-M-49863-2022 decided on 31.10.2022 in somewhat similar circumstances, while setting aside the order, observed as under:-

“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.”

The very purpose of issuance of non-bailable warrants, 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, 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 facts and circumstances of this case and the judgments referred to above, entire proclamation proceedings initiated against the petitioner vide order dated 01.10.2014, Annexure P-2 declaring the petitioner as proclaimed person passed by learned Judicial Magistrate Ist Class, Moga, 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 23.01.2023 before the trial Court and file an application for seeking bail, which shall be decided expeditiously. 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 aforesaid, the present petition shall be deemed to have been dismissed without any reference to this Court.

(AMAN CHAUDHARY)
JUDGE

December 16, 2022

M.Kamra/S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>