

CRM-M-60655-2022

:1:

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

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CRM-M-60655-2022

Date of Decision: December 23, 2022

Dalbir Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Manvinder Sidhu, Advocate
for the petitioner.

AMAN CHAUDHARY, J.

The present petition under Section 482 of the Cr.P.C. has been filed for quashing the impugned order dated 03.09.2022 (Annexure P-2), passed by Judicial Magistrate Ist Class, Sirsa, declaring the petitioner a proclaimed person and the subsequent proceedings arising therefrom, including FIR No.947 dated 29.10.2022, under Section 174A IPC at Police Station Sirsa City, District Sirsa.

Learned counsel for the petitioner submits that in the complaint lodged against him, he was never served. It is on account of not having been served or having knowledge of the proceedings against him because of which he could not appear but was declared a proclaimed person without compliance of provisions of Section 82 Cr.P.C. He further contends that no proclamation was read in the conspicuous place of town or village. To buttress his submission, he places reliance on the judgments 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.

Notice of motion to respondent No.1 only at this stage.

Mr. Tanuj Sharma, AAG, Haryana, who has appeared on receipt of advance copy of the petition, opposes the petition by submitting that the impugned order has been rightly passed by the learned trial Court.

In this case, notice has not been issued to respondent No.2-complainant as no order prejudicial to his rights, is being proposed to be passed by this Court.

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 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 inasmuch the petitioner was never served, thus could not appear before the trial Court, which appears to be justified explanation of absence. At times, the accused or his counsel can be prevented by sufficient reasons to put an appearance before the Court on a given date and every such absence cannot necessarily be construed as deliberate and willful. However, it is incumbent upon him to join the proceedings, before the trial Court, for the culmination of the same. Considering the fact that the absence of the petitioner being not willful or deliberate and his readiness and willingness to surrender and join the proceedings, in case one opportunity is granted to the petitioner, no prejudice shall be caused to any of the parties, rather his joining the proceedings would help expediting the trial. Thus, in order to make the ends of justice meet and finding judgments referred to above being applicable to the instant case, the present petition deserves to be allowed.

In view of the facts and circumstances of this case and the judgments referred to above, the impugned order 03.09.2022, Annexure P-2, is set aside and also the consequent FIR No.947 dated 29.10.2022, is quashed. The petitioner is directed to surrender before the trial Court on or before 15.01.2023 and in case, he files bail application, the same shall be decided expeditiously.

December 23, 2022
Rimpal/gsv

(AMAN CHAUDHARY)
JUDGE

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