

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
257

CRM-M-910-2022 (O&M)
Date of decision: 05.09.2023

Gurpreet Kaur & Others

...Petitioner(s)

Vs.

Harvinder Singh & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Krishan Singh Dadwal, Advocate
for the petitioners.

Mr. Kunwarbir Singh, AAG Punjab.

NIDHI GUPTA, J.

Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing of complaint No.31/2017 dated 12.06.2017 filed under Sections 323, 324, 452, 506, 354 read with Section 34 IPC pending before the Court of learned Judicial Magistrate, 1st Class, Hoshiarpur (Annexure P1), and all subsequent proceedings arising therefrom; including summoning order dated 18.10.2018 issued under Sections 323, 325, 452, 506 and 354 IPC (Annexure P2); and order dated 30.01.2020 (Annexure P7) whereby petitioner No.1 has been declared proclaimed person in contravention to provision of Section 82 Cr.P.C., on the basis of compromise dated 09.12.2021 (Annexure P9) arrived at between the parties.

2. Learned counsel for the petitioners submits that vide order dated 11.11.2022 the present petition was dismissed by this Court qua petitioners No.2 and 3 herein.

3. As regards petitioner No.1, learned counsel submits that the petitioner No.1 has been declared a proclaimed person in violation of the provisions of Section 82 Cr.P.C. It is submitted that respondent No.1 had registered a complaint case against the petitioners under Sections 323, 324, 452, 506, 354 read with Section 34 IPC at Police Station NRI, Hoshiarpur on 12.06.2017 (Annexure P1). It is submitted that petitioner No.1, who is an NRI, had last come to India in March, 2017 and had gone back on 30.05.2017, whereas, above said complaint was filed thereafter on 12.06.2017.

4. It is submitted that as mentioned in para 8 of the present petition, the police official who had effected proclamation had recorded statement of Seema Kumari w/o Daya Ram, who had categorically mentioned that petitioner No.1 had been residing in Canada for many years and she (Seema Kumari), had been residing in her house as a tenant. It is submitted that still the publication was done at the same address. It is reiterated that despite the above said facts, and despite the fact that the petitioner No.1 has not returned to India till date, yet, petitioner No.1 was declared proclaimed person vide impugned order dated 30.01.2020 (Annexure P7).

5. Learned counsel further states that in declaring petitioner No.1 as a proclaimed person, the learned Court below has totally ignored the provisions of Section 82 Cr.P.C. Learned counsel contends that as per Section 82 Cr.P.C., proclamation is required to be made where the accused ordinarily resides. Admittedly, in the present case, as per the

information given to the Constable, petitioner No.1 was not residing in the village and even prior to registration of the case, she had already gone abroad. Therefore, mandatory provisions of Section 82 Cr.P.C. have not been complied with.

6. It is further submitted that apart from provisions of Section 82 Cr.P.C., as per law laid down by Hon'ble Supreme Court, before declaring a person who is residing abroad to be a proclaimed person, it was also incumbent upon the Courts to follow the procedure for effecting service upon the accused through the Ministry of External Affairs or through the Embassy but in the present case, the said recourse has not been followed.

7. In support of his contentions, learned counsel relies upon judgment of this Court in **"Mehtar Singh & Another Vs. State of Punjab"** Law Finder doc ID # 207561, wherein it has been held as follows:-

"8. The petitioners; as per the averments in the petition, are residing in Canada much before the registration of FIR in question. As per Section 82, Criminal Procedure Code proclamation can issued against a person if the Court has reason to believe that a person against whom a warrant has been issued has absconded or is concealing himself and that the warrant cannot be executed.

9. In the present case, since the petitioners were already residing in Canada before the registration of FIR in question i.e. since the year 1997, there was no occasion for them to conceal themselves or abscond. A perusal of order dated 7-10-2008 (Annexure P-10) and order dated 21-12-2007 (Annexure P-4) does not reveal that the petitioners were ever attempted to be served in Canada especially when there was no material on

record that the petitioners had left the country after the registration of FIR in question with a view to abscond or conceal themselves. Rather in the inquiries conducted by the police, the petitioners were found to be innocent because the alleged papers in question were prepared in Canada. Thus, the petitioners were declared proclaimed offenders in violation of Section 82, Criminal Procedure Code.”

8. Learned counsel further points out that in the meantime, the petitioners and respondent No.1 had even settled/compromised the matter vide compromise deed dated 09.12.2021 (Annexure P9) whereby all the civil disputes including the present complaint have been agreed to be closed; and thereafter, vide judgment dated 30.05.2022 passed by learned Judicial Magistrate, 1st Class, Hoshiarpur (Annexure P10), co-accused/petitioners No.2 and 3 herein have also been discharged. It is stated that in pursuance to the above judgment dated 30.05.2022, even this Court vide order dated 11.11.2022 was pleased to dismiss the present petition qua petitioners No.2 and 3 herein.

9. In support of his above submissions, learned counsel relies upon judgment of this Court in **“Vinod Kumar @ Vinod Saddi Vs. State of Punjab” Law Finder doc ID # 249135**, wherein it has been held as follows:-

“7. After examining the allegations in the present case, it is seen that the same are not separate or different from the allegations qua all other accused who have already been acquitted by the trial Court. In any case, the complainant himself was not able to lead evidence. The other accused were acquitted on account of failure on the part of the complainant

himself to appear for cross examination. Thus, they were acquitted on a total lack of evidence. The Judicial Magistrate Ist Class, Nawanshahr in his judgment dated 10.08.2009 has therefore, rightly concluded that the prosecution has not been able to prove its case against the other accused persons. Thus, it would not be in the interest of justice to permit the present petitioner to be subjected to a trial when the result is evident."

10. Learned counsel also relies upon judgments of this Court in **"Sudo Mandal @ Diwarak Mandal Vs. State of Punjab"** Law Finder doc ID # 249157 and **"Narinder Singh & Another Vs. State of Punjab & Another"** Law Finder Doc ID # 1331940. Learned counsel further submits on instructions that no FIR has been registered against petitioner No.1 under Section 174-A Cr.P.C.

11. It is submitted that therefore, in these circumstances, complaint dated 12.06.2017 (Annexure P1); summoning order dated 18.10.2018 (Annexure P2); and order dated 30.01.2020 declaring petitioner No.1 as proclaimed person (Annexure P7), be set aside.

12. Learned State Counsel does not dispute the above said facts, and on instructions further admits that no FIR has been registered against petitioner No.1 under Section 174-A Cr.P.C.

13. I have heard learned counsel for the parties.

14. In view of the undisputed factual and legal position as noticed above, the present petition is **allowed**; and complaint No.31/2017 dated 12.06.2017 filed under Sections 323, 324, 452, 506, 354 read with Section 34 IPC pending before the Court of learned Judicial Magistrate, 1st

Class, Hoshiarpur (Annexure P1), and all subsequent proceedings arising there from; including summoning order dated 18.10.2018 issued under Sections 323, 325, 452, 506 and 354 IPC pending in the Court of learned Judicial Magistrate, 1st Class, Hoshiarpur (Annexure P2); and order dated 30.01.2020 (Annexure P7) whereby petitioner No.1 has been declared proclaimed person, are hereby quashed/set aside.

15. Pending application(s) if any also stand(s) disposed of.

05.09.2023
Sunena

(Nidhi Gupta)
Judge

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