

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

205-A+115

CRM-M-3989-2020 (O&M)
Date of decision : 11.01.2023

Harwinder Singh

Petitioner

V/S

State of Punjab

Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Damanjit Singh Sandhu, Advocate
for the petitioner.

Mr. Jaspal Singh Guru, Asstt. A.G., Punjab
for the respondent-State.

ASHOK KUMAR VERMA, J. (ORAL)

CRM-911-2023

For the reasons mentioned in the application, the same is allowed and copy of statement of Malkeet Singh, Ex-Sarpanch, Village Mohablipur, Tehsil Sultanpur Lodhi, District Kapurthala filed by the petitioner is taken on record as Annexure P-5.

CRM-M-3989-2020

The petitioner has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of order dated 06.08.2019 passed by learned Additional Chief Judicial Magistrate, Kapurthala whereby the petitioner was declared as proclaimed offender in case FIR No.01 dated 12.02.2016 registered under Sections 419, 420, 465, 474 and 120-B of the Indian Penal Code, 1860 at Police Station NRI, District Kapurthala, Punjab.

Brief facts of the case are that in the name of Davinder

Singh (son of the petitioner) and Simranjit Kaur (daughter-in-law) of the petitioner one Marriage Certificate dated 21.05.2010 was issued in which the petitioner is also a witness from the side of Davinder Singh. Thereafter, a complaint was filed by Manjit Kaur (mother of Simranjit Kaur) alleging that the marriage was got registered by an act of fraud and impersonation as her daughter-Simranjit Kaur and Davinder Singh were not in India when the said registration was made. On the said complaint FIR No.01 dated 12.02.2016 was registered. On his non-appearance before the trial Court, the petitioner was declared proclaimed offender vide impugned order dated 06.08.2019.

Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case. The petitioner is innocent and is a victim of fraud played by complainant-Manjit Kaur. On the complaint of complainant-Manjit Kaur, an inquiry was conducted, the parties including the petitioner were called and it was found that though the alleged marriage certificate was a forged one, yet the same was neither used nor any benefit was availed of it; that both Davinder Singh and Simranjit Kaur, were residing at Canada at that point of time and that on the basis of the inquiry, legal opinion was sought on 26.02.2015 and after the receipt of the legal opinion dated 27.02.2015, the complaint was consigned to the record room. After the complaint was consigned to the record, the petitioner went to Canada on 23.09.2015, whereas the present FIR was registered on 12.02.2016. The marriage was registered on 21.05.2010 and the complaint was filed on 12.03.2015 i.e. after a lapse of 05 years which clearly shows that complainant-Manjit Kaur is well aware about the registration of

marriage. The petitioner was not aware about the registration of the present FIR. Since 23.09.2015 to till date he is in Canada. On 06.08.2019, the trial Court wrongly declared the petitioner as proclaimed offender without following the mandatory procedure as laid down under Section 82 of the Cr.P.C. The petitioner never received warrant nor received any information regarding the declaration as a proclaimed offender. Non-appearance of the petitioner in the trial Court was neither intentional nor willful. Therefore, the present petitions may be allowed and impugned order dated 06.08.2019 may be quashed.

On the other hand learned State counsel opposed the present petition in terms or reply filed by way of an affidavit dated 15.04.2021 which is already on record. However, learned State counsel, on instructions, conceded the fact that the petitioner was not in India when he was declared as proclaimed offender.

I have heard learned counsel for the parties and gone through the paper-book.

Section 82 of the Cr.P.C., which provides for publication of proclamation against person absconding, reads as under:-

“82. Proclamation for person absconding.—

*(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation **requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.***

(2) The proclamation shall be published as follows:—

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of

the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1)."

Keeping in view the facts and circumstances of the case, I am of the considered view that the petitioner is in Canada since 2015 and no notice/proclamation was served upon him at the place of his residence and he was wrongly declared proclaimed offender vide impugned order dated 06.08.2019 in breach of the prescribed procedure under Section 82 of the Cr.P.C. Therefore, the impugned order dated 06.08.2019 suffers from material illegality and is liable to be set aside.

Accordingly, the petition is allowed and impugned order dated 06.08.2019 passed by learned Additional Chief Judicial Magistrate, Kapurthala whereby the petitioner was declared as

proclaimed offender in case FIR No.1 dated 12.02.2016 registered under Sections 419, 420, 465, 474 and 120-B of the Indian Penal Code, 1860 at Police Station NRI, District Kapurthala, Punjab is quashed along with all consequential proceedings arising out of the same.

11.01.2023

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(ASHOK KUMAR VERMA)

JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No