

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

CRM-M-6413-2020 (O&M)

Reserved on:- 12.04.2023

Pronounced on:- 18.04.2023

Jasjeet Singh Dhillon and Another

....Petitioners

Vs.

State of Punjab

...Respondent

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Anurag Arora, Advocate
for the petitioners.

Mr. M.S.Joshi, Addl. A.G. Punjab.

Mr. P.S. Ahluwalia, Advocate
for the complainant.

AMARJOT BHATTI, J.

1. The petitioners- Jasjeet Singh Dhillon and Baldeep Kaur have filed petition under Section 482 Cr.P.C. for quashing of order dated 16.11.2019 (Annexure P-6) declaring the petitioners as proclaimed offenders and order dated 02.12.2019 (Annexure P-7) ordering to attach the properties of the petitioners passed by learned Judicial Magistrate First Class, Ludhiana and subsequent proceedings for appointment of receiver to look after the attached properties in FIR No. 59 dated 22.02.2019, under Section 406, 498-A of Indian Penal Code, registered at Police Station Women Cell, Police Commissionerate, Ludhiana (Annexure P-1) being against the law and resulting into miscarriage of justice.

2. The petitioners submitted that the FIR was registered on the complaint of Tania Pandher, daughter of Sh. Raj Paul Singh (adoptive

father Paramjeet Singh Pandher), resident of House No. 43-G, Bhai Randhir Singh Nagar, Ludhiana, Punjab, now resident of 5610, Signal Hill Drive Dublin CA 94568. The allegations levelled in the said FIR are false, frivolous and baseless. The complainant had filed false police complaint against the petitioner No. 1, levelling the allegations of domestic violence in United States of America on 15.12.2018 and filed Domestic Violence Restraining Order case against him on 20.12.2018. The complainant Tania Pandher lost her case and she was ordered for mental health assessment. The copy of order dated 29.01.2019 is Annexure P-2. Due to the matrimonial dispute, the petitioner No. 1 was compelled to file divorce petition in the Superior Court of California, Orange County. Copy of that petition is Annexure P-3. As per the facts narrated in the complaint/FIR, most of the allegations pertain to the period when they were residing in United States of America. A false FIR has been registered by the complainant through her biological father being her power of attorney holder. Jaskiranjit Singh Teja is ADCP-2 at Ludhiana, who is cousin of the complainant and he is instrumental in causing harassment to the petitioners. Their passports were impounded within two minutes notice and they also got issued RED Corner alert on all airports. The petitioner No. 1 requested DGP, Punjab Police for fair investigation and his e-mail application was transferred to ADGP, NRI Wing. Later on, the said complaint was ignored. His application filed before Commissioner of Police, Ludhiana and ACP Women Cell, Ludhiana was also ignored. The copies of e-mails and applications are Annexure P-5. They have also filed one Criminal Miscellaneous M No. 23956 of 2019 for quashing of aforesaid FIR. The petitioners never came to know about the proclamation

proceedings initiated in the present case. They were wrongly declared proclaimed offenders on 16.11.2019 without following proper procedure and their properties were also ordered to be attached in a hasty manner. The impugned orders are Annexures P-6 and P-7. Application was also filed for appointment of receiver to look after the attached properties. The copy of order dated 17.01.2020 is Annexure P-8. On obtaining the copies of record, it was revealed that the complainant got recorded her statement that the petitioners are resident of 9 VIA Burrone Newport Coast CA 92657 United States of America and the proclamation was initiated against the petitioners on the said address. The copy of statement of the complainant dated 26.09.2019 is Annexure P-9. The summons issued on the address of United States of America received back with the report of unserved and thereafter, they were ordered to be summoned through proclamation by way of publication in newspaper. Copy of order dated 26.09.2019 is Annexure P-10. In fact, they were not residing on the aforesaid address and for this reason, they never came to know about the proclamation proceedings. They have also placed on record the letter dated 11.09.2019, letter dated 09.09.2019 received from United States Department of Justice, Criminal Division along with the letter of Under Secretary to the Government of India, Ministry of Home Affairs, addressed to the Court which are Annexure P-11. Under these circumstances, the impugned orders passed by learned Magistrate were not justified. The learned counsel representing the petitioners have also placed on record the copies of orders passed by learned Magistrate Annexure P-21, P-22 and P-23. There is copy of one lease deed pertaining to the period 12.05.2016 to 03.31.2017, Annexure P-25 where the address of the

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petitioner No. 1 was mentioned as 550 Paularino Ave Costa Mesa Ca 92626. The learned counsel for petitioners argued on these lines and pointed out that the petitioners are in India and they are ready to face the trial. The proclamation proceedings initiated against the present petitioners are not justified and the same may be set aside by accepting the present petition.

3. Learned counsel for the complainant argued that the stand taken by the petitioners is without justification. The address disclosed by the complainant was correct. In fact, they were fully aware of the registration of FIR as well as proclamation proceedings initiated against them. They were avoiding to appear before the learned Court, as a result, the proceedings of the case were delayed. The learned counsel for the complainant referred to the statement of Tania Pandher Annexure P-9 where she had disclosed the address of petitioners as 9 VIA Burrone Newport Coast CA 92657 United States of America. There is Special Power of Attorney of Jasjeet Singh Dhillon dated 06.05.2019 where he had mentioned the same address as disclosed by the complainant. There is copy of Driving License of Jasjeet Singh Dhillon. There is one application filed by Jasjeet Singh Dhillon addressed to the Assistant Commissioner of Police, CAW Cell, Ludhiana dated 12.04.2019, Annexure P-5 where again Jasjeet Singh Dhillon has mentioned the same address as disclosed by the complainant. Now, by filing the present petition, he has mentioned different address as 1738 N, Terracina Dr Dublin, CA 94568, USA and while filing the affidavit, he has mentioned another address as 4738 E, El Rito Dr, Orange, CA, 92867, USA. The conduct of the petitioners clearly indicate that they have mentioned different addresses to evade the process

of law. Therefore, the petition filed by the petitioners may be dismissed.

4. I have considered the arguments advanced by learned counsel for the petitioners as well as learned counsel for the complainant. It is matter of record that on the complaint of power of attorney holder of Tania Pandher, FIR No. 59 dated 22.02.2019, under Section 406, 498-A of Indian Penal Code Annexure P-1 was registered at Police Station Women Cell, Police Commissionerate, Ludhiana against Jasjeet Singh Dhillon who is the husband of complainant and Baldeep Kaur who is the mother-in-law of complainant. The petitioners have filed the present petition for quashing of order dated 16.11.2019, Annexure P-6 vide which they were declared proclaimed offenders and order dated 02.12.2019, Annexure P-7 vide which their properties were attached and by passing subsequent order, receiver was appointed to look after their properties in the aforesaid FIR. It is an admitted fact that the parties were residing in Unites States of America and the FIR has been registered through power of attorney holder of the complainant. It is the case of the petitioners that their address was not correctly given by the complainant deliberately, as a result of which, they did not come to know about the proclamation proceedings initiated against them. As per the record placed on file by the learned counsel for the petitioners, there is statement of Tania Bhardwaj Annexure P-9 where she has mentioned the address of petitioners as 9 VIA Burrone Newport Coast CA 92657 United States of America. The notice was ordered to be summoned on the said address by issuing letter to the concerned Ministry and vide letter dated 11.09.2019 addressed to the concerned Magistrate by under Secretary to the Government of India, Annexure P-11, the information received from Senior Trial Attorney dated 09.09.2019 that Jasjeet Singh Dhillon could not be served as the address provided was

incorrect and efforts to identify the accurate address was unsuccessful. Thereafter, the proclamation proceedings were initiated under Section 82, 83 of Cr.P.C. The learned counsel for the petitioners have relied upon one lease deed Annexure P-25 where the address of the petitioner No. 1 is mentioned as 550 Paularino Ave Costa Mesa Ca 92626 and this lease deed is pertaining to the period 12.05.2016 to 03.31.2017. On this basis, it is claimed that the petitioners were not residing on the said address and the address was wrongly mentioned by the complainant. At the same time, the learned counsel for the complainant has placed on record the copy of Driving License, copy of complaint addressed to Assistant Commissioner of Police, CAW Cell, Ludhiana Annexure P-5, copy of Special Power of Attorney dated 06.05.2019 signed by Jasjeet Singh Dhillon where the same address of the petitioner No.1 is mentioned as disclosed by the complainant. At the same time, it cannot be ignored that there is letter of under Secretary to the Government of India along with information sent by Senior Trial Attorney, Annexure P-11 where it was mentioned that the address mentioned in the process was incorrect and the accurate address could not be identified. This letter indicates that the petitioners might have changed their address. Apart from this, it is rightly pointed out by learned counsel for the complainant that in the petition as well as in the affidavit filed by the petitioner No. 1, different addresses have been mentioned. Therefore, considering the aforesaid record, it cannot be said that the complainant had furnished wrong address of the petitioners.

5. The other aspect of the present case is the procedure followed by the learned Court of Judicial Magistrate First Class while issuing the process of proclamation proceedings. There is copy of order dated

26.09.2019, Annexure P-10 according to which the process issued through

Ministry of Home Affairs was received back unexecuted as the address provided therein was incorrect and the accurate address could not be located. Thereafter, summons were issued through proclamation to be issued by way of publication in the newspaper "The Indian Express" for 02.11.2019. The process issued in this regard by the learned Judicial Magistrate First Class, Ludhiana is Annexure P-21. Thereafter, again there is an order dated 14.10.2019 for issuance of fresh notice in the newspaper. Ultimately, the notice of proclamation was published on 15.10.2019. The period of 30 days had not lapsed, therefore, it was again adjourned to 16.11.2019 as per order dated 02.11.2019. By relying upon the aforesaid proclamation through publication, both the petitioners were declared proclaimed offenders as per impugned order dated 16.11.2019, Annexure P-6. The properties belonging to the petitioners was also ordered to be attached under Section 83 of Cr.P.C. The said order dated 02.12.2019 is Annexure P-7. One application was also moved for appointment of receiver to look after the attached property. The order dated 17.01.2020 is Annexure P-8. In the case in hand, the proclamation was issued under the provisions of Section 82(1) of Criminal Procedure Code, 1973. Section 82(1) Cr.P.C. runs 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 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...."

As per the aforesaid provision, the accused regarding whom the proclamation has been issued is required to be given time period of not

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less than 30 days from the date of publication of said proclamation for appearance in the Court as specified in the process issued by the Court. As mentioned in the aforesaid orders, the proclamation was issued for 02.11.2019. However, the publication was received back served on 15.10.2019 but the period of 30 days had not lapsed, therefore, another date was given i.e. 16.11.2019. Therefore, from the date of issuance of publication in newspaper "The Indian Express", clear period of 30 days was not given to the said accused for appearing in the Court. On this point, there is authority of Co-ordinate Bench in Criminal Misc. M No. 13638 of 2013 decided on 05.08.2013 titled "*Ashok Kumar Versus State of Haryana and another*", where in a similar situation, the proclamation order was set aside. Therefore, considering the aforesaid facts, the proclamation was not issued as required under the provisions of Section 82 of Cr.P.C. Moreover, both the petitioners are in India and they are ready to join the investigation and face the trial. The main purpose for issuance of process including proclamation was to procure their service and the said objective has been achieved. Their case was also referred to Mediation and Conciliation Centre but the matter could not be resolved. The petitioners are now ready to face the investigation and trial. In view of my above discussion, I find merits in the petition filed by the petitioners and the impugned order dated 16.11.2019 (Annexure P-6) and the order dated 02.12.2019 (Annexure P-7) regarding attachment of properties and subsequent orders there to in pursuance of proclamation proceedings are accordingly, quashed by accepting the present petition.

Pending application(s), if any, also stands disposed of.

18.04.2023
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(AMARJOT BHATTI)
JUDGE

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