IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-12319-2021
Date of Decision: February 21, 2023

Sakinder Kaur **…Petitioner**

Versus

State of Punjab **…Respondent**

2. **CRM-M-2037-2019**

Sakinder Kaur **…Petitioner**

Versus

State of Punjab and another **…Respondents**

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Navkiran Singh and Ms. Harpreet Kaur, Advocates for the petitioner in both cases.

Mr. R.S. Khaira, DAG, Punjab.

Mr. Harshit Jain, Advocate for the complainant in CRM-M-12319-2021.

Mr. Ashok Singla, Advocate for the complainant in CRM-M-2037-2019.

DEEPAK GUPTA, J.(Oral)

This order shall dispose of aforesaid two petitions between the same parties arising out of the same FIR. Prayer made in CRM-M-2037-2019 filed under Section 482 Cr.P.C. is to quash FIR No.141 dated 31.08.2018, registered at Police Station Sadar Dhuri, District Sangrur (Annexure P-3) under Sections 420, 406 and 120-B of IPC and all the subsequent proceedings arising therefrom; whereas prayer made in CRM-M-12319-2021 filed under Section 482 Cr.P.C. is to quash the order dated 25.04.2019 (Annexure P-11) passed by learned Judicial Magistrate, Dhuri, vide which the petitioner was declared as proclaimed offender in the above said FIR No.141 dated 31.08.2018.

2. Petitioner is the wife of respondent No.2 Daljit Singh. Their marriage was performed on 8.8.2002. Much prior to the marriage, complainant of the FIR - respondent No.2 was residing in Kuwait. Soon after the marriage, petitioner also shifted to Kuwait with her husband i.e. complainant-respondent No.2. Two children were born out of their wedlock. Petitioner along with her children left Kuwait and shifted to Canada in March, 2017.

3. FIR was lodged on the complaint of husband-respondent No.2 not only against the petitioner-wife Smt. Sakinder Kaur but also against her other family members i.e. father Gurcharan Singh, brother Jatinder Singh, sisters Harinder Kaur & Rupinder Kaur and their respective husbands Pritpal Singh and Kaka Singh. It was alleged that Sakinder Kaur along with her children left Kuwait on 20.03.2017 and came to Dhuri, telling the complainant that she was going to meet her parents. While coming, she brought 2000 Dinars equivalent to ₹4,50,000/-, about 1 kg. gold and lot of other articles; that complainant-respondent No.2 had deposited ₹3,00,000/- each in the form of FDRs in the State Bank of Patiala and ₹10,00,000/- in the form of FDR in Muthoot Finance in the name of wife-petitioner in the year 2014, which was to mature in 2019. He had also taken a locker in the Central Bank in the name of wife, in which approximately 1 - 1½ Kg. gold was kept, which was purchased by him and given to his wife-petitioner. It was alleged further by the complainant-respondent No.2 that he had sent money to his father-in-law Gurcharan Singh for purchasing shop in his name but by cheating, the same was got registered in the name of Sakinder Kaur-petitioner. Another money was sent to purchase the plot

was used to purchase the plot in the name of Sakinder Kaur-petitioner. Money was also sent to purchase JCB machines for the complainant but those machines were purchased in the name of brother-in-law Jatinder Singh, though these machines were later on returned. It was also alleged that two sisters-in-law and their respective husbands got invested an amount of ₹10,00,000/- in a Chit Fund Company, but they paid interest for 6-7 months and then backed out from paying interest. On these allegations and after conducting necessary inquiry, FIR was registered under Sections 406, 420 and 120-B IPC and challan was presented.

4. Petitioner submits that she was being treated by her husband as his slave. She was bearing all the physical and mental torture for the last 15 years for the sake of children in the hope that she would have a life of dignity and could educate her children as good humans. However, when things went beyond control, she decided to immigrate to Canada and departed from Kuwait on 20th March, 2017 and reached Canada on 22.03.2017 along with her children. She made a complaint to NRI Police Station, Mohali on 06.02.2018, sent through e-mail, containing all the allegations of physical and mental torture by her husband-respondent No.2-complainant and demanding action against him. Respondent No.2-complainant on the other hand made a complaint, before registration of the present FIR, against his wife- petitioner and her family members, copy of which is Annexure P-4. Husband of the petitioner also filed a civil suit for declaration for the shop as well as plot, which the petitioner claims to have been purchased in her name. Those purchases were related to the year 2012-2013 but grievance was raked up for the first time in the year 2018. Another suit was filed by the husband (complainant-

respondent No.2) for rendition of accounts against his in-laws on the pretext that he had invested the money in purchasing JCB machines and a car and that he was running a joint business in the partnership. Divorce petition (copy Annexure P7) was also filed by the husband (complainant-respondent No.2) taking the plea that petitioner-wife along with the children left for Canada without disclosing their whereabouts.

5. Petitioner-wife submits that during inquiry proceedings in the process of registration of the FIR, parties entered into a compromise and the husband (complainant-respondent No.2) was handed over two cranes, which he was wrongly terming as JCB machines, besides Duster vehicle SUV. Second crane was transferred in the name of his relative as per his wishes. The record of registration authorities now show the motor car to be transferred in the name of husband (complainant-respondent No.2), whereas one crane has been transferred in the name of his cousin Harjit Singh and other is his own name. Two plots purchased in the name of his mother-in-law as per his desire have been transferred back by issuing a Power of Attorney in the name of the husband (complainant-respondent No.2) Daljit Singh, vide Annexure P-9.

6. Petitioner submits further that the allegations leveled in the FIR do not make out a case of cheating or misappropriation of any property. It is contended that a husband cannot claim that FDR or gold purchased and gifted to the wife, if not returned, will make out an offence under Section 406 or 420 IPC. It is contended further that tone and tenor of the FIR indicates that the husband was irritated by the fact that petitioner had chosen to immigrate to Canada without seeking his permission and opted to have a life of dignity of her own, which hurt his

male ego and he started a series of litigation with a vindictive mind, which is nothing but an abuse of process of law. It is contended further that allegations made in the FIR do not *prima facie* make out a case of criminal offence and that case falls within the parameters of the judgment of the Hon'ble Supreme Court in case of ***"State of Haryana v Ch. Bhajan Lal",*** reported as AIR 1993 SC, 1348 for quashing the FIR.

7. In the reply filed by respondent No.1- State, it is contended that it was found during investigation that family of the petitioner-wife had no resources at the time of her marriage. Husband (complainant-respondent No.2) always looked after the petitioner and his children and had made the FDRs in their names. Petitioner and her family members in connivance with each other were found to have misappropriated the earnings/amounts received from complainant-respondent No.2 for purchasing of the property and equipment in their name with intention to cheat him. During the inquiry, sister-in-law of complainant-respondent No.2, namely Harinder Kaur admitted the guilt and returned ₹10,00,000/- in cash and a sum of ₹1.9 lacs on account of one JCB machine and transferred two JCB machines and Duster car that was registered in the name of father-in-law Gurcharan Singh and brother-in-law Jatinder Singh in the name of Harjit Singh, the close associate of complainant-respondent No.2. The two plots registered in the name of the mother-in-law of complainant-respondent No.2 were transferred back to complainant's party but neither the profit earned by JCB machines nor one plot, shop and FDRs in the name of the wife-petitioner were returned, therefore, the FIR was registered.

8. It is further submitted in the reply that petitioner-wife did not

join the investigation and absconded and so, she was got declared proclaimed person after making compliance of the provisions of Section 82 Cr.P.C. and FIR No.203 dated 01.10.2021 under Section 174-A IPC was registered against her. It is submitted that there being specific allegations against the petitioner, so police had the statutory right to investigate into the cognizance offence. Details of the civil litigation pending between the parties are also given, with the submissions that petition for quashing is not maintainable.

9. In short reply filed on behalf of respondent No.2-complainant, it is contended that petitioner has already been declared proclaimed offender by learned Judicial Magistrate 1st Class, Dhuri, on 25.04.2019 and so, without submitting her to the jurisdiction of the Courts in India and by challenging the P.O. order, she cannot seek quashing of the FIR in question and so, quashing petition is not maintainable.

10. This court has considered the submissions made by Ld. Counsels for both the sides and have perused the record.

11. Admittedly, marriage between the parties was solemnized on 08.08.2002 and five days after the marriage, petitioner shifted with her husband (complainant-respondent No.2) to Kuwait. Two children were born out of this wedlock. It is also not in dispute that petitioner along with her children left her husband (complainant-respondent No.2) and shifted to Canada in March, 2017. According to her, she along with her children shifted to Canada to live a life of dignity, as all along as she was being physically and mentally tortured by her husband.

12. The entire litigation civil or criminal started only after the

petitioner left the company of her husband. Initially, husband (complainant-respondent No.2) filed a civil suit in September, 2017 to declare him as owner of the property i.e. a shop and plots. On 06.02.2018, petitioner-wife made a complaint at NRI Police Station, Mohali against her husband (complainant-respondent No.2), though the same was recommended to be filed. Husband made a complaint on 26.02.2018 against petitioner-wife and her relatives resulting into registration of present FIR. On 30.03.2018, divorce petition was filed by the husband (complainant-respondent No.2). On 06.07.2018, another civil suit for rendition of account was filed by the husband (complainant-respondent No.2) against the petitioner-wife and her family members.

13. The FIR reveals the following allegations to have been made by the husband (complainant-respondent No.2):-

- that wife Sakinder Kaur brought 2000 Dinars equivalent to ₹4,50,000/- in Indian Currency, besides 1 Kg. of gold and other articles;
- that complainant had deposited ₹3,00,000/- each in the form of FDRs in the State Bank of Patiala and another FDR of ₹10,00,000/- in Muthoot Finance in 2014 in the name of the wife (petitioner), which were to mature in 2019;
- that complainant had opened a locker in Central Bank in the name of wife, which was having 1 - 1½ Kg. gold given to wife-Sakinder Kaur (petitioner);
- had paid money to father-in-law Gurcharan Singh to purchase shop and plots in Dhuri in the name of

complainant but the same were purchased in the name of wife-Sakinder Kaur (petitioner) i.e. daughter of Gurcharan Singh;

- that money was paid to Gurcharan Singh (father-in-law) to purchase JCB machines, but those were purchased in the name of brother-in-law Jatinder Singh and wife Sakinder Kaur (petitioner);
- an amount of ₹10,00,000/- was paid to sisters-in-law and their respective husbands to be invested in a scheme for which interest was given for 6-7 months.

14. As far as the allegations pertaining to petitioner-wife are concerned, these are that she brought 2000 Dinars, 1 kg. gold and other articles; that some FDRs were taken in her name in 2014, which were not returned and that complainant-respondent No.2 had opened a locker in Central Bank in the name of her wife (petitioner) having gold given to her. Rest of the allegations are against father-in-law Gurcharan Singh, who had been sent money to purchase properties in the name of complainant-respondent No.2, but they were rather purchased in the name of wife-petitioner.

15. The question is that whether the above said allegations make out a criminal offence. It is important to notice here itself that complainant-respondent No.2 did not have any grievance till the petitioner-wife lived with him in Kuwait i.e. till March, 2017. He raked up all the grievances only after she left his company. Except for the FDRs, which are stated to have been taken in 2014, no time period is mentioned as to when the money was sent to Gurcharan Singh (father-in-

law) to purchase the property. There is no allegation, whether gold was entrusted to the wife-petitioner; or that wife had made any inducement.

16. In ***Bhajan Lal's case (supra),*** Hon'ble Supreme Court has laid down various guidelines, when a High Court can exercise its power under Section 482 Cr. P.C. for quashing the FIR. It was held as under:-

> *"8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration, wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible kinds of cases wherein such power should be exercised:*
>
> *(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;*
>
> *(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;*
>
> *(c) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*
>
> *(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;*
>
> *(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for*

proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

17. In this case, the allegations in the FIR do not make out a case either under Section 406 or 420 IPC against the petitioner.

18. Section 415 of the IPC defines the offence of cheating, which reads as under:-

> ***"Section 415. Cheating.*** *- Whoever, by deceiving any person, fraudulently or dishonestly* ***induces the person so deceived*** *to deliver any property to any person, or to consent that any person shall retain any property, or intentionally* ***induces the person*** *so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."*

19. Thus, the ingredients to constitute an offence of cheating are as follows:

i) there should be fraudulent or dishonest inducement of a person by deceiving him;

ii) (a) the person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

(b) the person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

iii) in cases covered by (ii) (b) above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

20. It is clear that in order to attract the offence of cheating, fraudulent or dishonest inducement is an essential ingredient. However, in this case, nowhere in the complaint, which is the basis of the FIR, it has been alleged by complainant-respondent No.2 that alleged FDRs in the name of wife (petitioner) and the children; or the money for purchasing of shop or plot etc; or alleged gold kept in the locker were obtained by the wife-petitioner by way of any inducement nor it is claimed that he was induced to deliver the same to the petitioner-wife. It is evident from the FIR itself that all the money was sent by the complainant husband voluntarily.

21. In "***Prof. R.K. Vijayasarathy v. Sudha Seetharam***", 2019(5) RCR (Criminal) 537, the Hon'ble Supreme Court has observed as under:-

> *"18* ***The condition necessary for an act to constitute an offence under*** Section 415 ***of the Penal Code is that there was dishonest inducement by the accused****. The first respondent admitted that the disputed sum was transferred by the son of the appellants to her bank account on 17 February 2010. She alleges that she transferred the money belonging to the son of the appellants at his behest.* ***No act on part of the appellants has been alleged that discloses an intention to induce the delivery of any property to the appellants by the first respondent. There is thus nothing on the face of the complaint to indicate that the appellants dishonestly induced the first respondent to deliver any property to them. Cheating is an essential ingredient to an offence under*** Section 420 ***of the Penal Code****. The ingredient necessary to constitute the offence of cheating is not made out from the face of the complaint and consequently, no offence under* Section 420 *is made out.*
>
> *19 XXXX*

> *20 The suit for recovery of money was instituted by the son of the appellants against the first respondent in 2013. The complaint alleging offences under the Penal Code was filed by the first respondent belatedly in 2016.* ***It is clear from the face of the complaint, that no amount was entrusted by the first respondent to either of the appellants and there was no dishonest inducement of the first respondent by the appellants to deliver any property.*** *As stated by the first respondent in the complaint, the money belonged to the son of the appellants.* ***It was transferred by the appellants' son to her on his own volition****. The money was alleged to have been returned to the appellants on the instructions of their son. A plain reading of the complaint thus shows that the ingredients necessary for constituting offences under Sections 405, 415 and 420 of the Penal Code are not made out."*

22. Having regard to the legal position as above, it is held that as there is no allegation that FDRs of ₹10,00,000/- and ₹3,00,000/- each, which were in the name of wife-petitioner or the children were taken by the complainant on any fraudulent inducement on the part of petitioner-wife, so Section 420 IPC is not attracted. Similarly, there is no allegation that husband (complainant-respondent No.2) was ever induced to give gold to the wife-petitioner.

23. Apart from above, it is rightly argued by learned counsel for the petitioner that money or gold given by the husband (complainant-respondent No.2) to the wife (petitioner) and children, even if wife is not earning would not preclude the wife (petitioner) to have right over that money and to utilize the same.

24. Although in a different context for the purpose of assessment of compensation in a Motor Vehicular Accident, Hon'ble Supreme Court of India in case of ***"Arun Kumar Aggarwal v. National Insurance***

Company", 2010 (3) RCR (Civil) 827, has highlighted the role of a wife/non-earning member of the family by terming her to be a home-maker. It has been observed as under:-

> "*23. In India the Courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous services rendered by wife with true love and affection to the children and her husband and managing the household affairs cannot be equated with the services rendered by others. A wife/mother does not work by the clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer's work for particular hours. She takes care of all the requirements of husband and children including cooking of food, washing of clothes, etc. She teaches small children and provides invaluable guidance to them for their future life. A housekeeper or maidservant can do the household work, such as cooking food, washing clothes and utensils, keeping the house clean etc., but she can never be a substitute for a wife/mother who renders selfless service to her husband and children.*
>
> *24. It is not possible to quantify any amount in lieu of the services rendered by the wife/mother to the family i.e. husband and children.-----"*

25. Besides above, in ***"Binapani Paul v. Prathima Ghosh", 2007(2) RCR (Civil) 801,*** it has been held by the Hon'ble Supreme Court that when a husband purchases the property in the name of his wife, for the welfare of the security of the wife or daughters, it is not a *benami* property. Husband when provides money to the wife to purchase property, wife should be considered owner, not *benami*. Relying upon the same authority, the Kerala High Court has held in ***"C.C. Joy v. C.D. Mini", 2022(4) KLT 162,*** as under:-

> *"88. When husband purchases property as part of his real estate business joining his wife as a name lender in the title document,*

> *even availing bank loans in her name to pay the consideration, it cannot be said that the purchase was for the benefit of the wife, when there is clear evidence to prove the benami nature of the transaction.* ***But when there is evidence to show that the husband purchased the property or executed document in favour of his wife, unless the contrary is proved, it will be treated as the property of the wife purchased for her benefit.*** *The intention of the parties is a key factor in determining the nature of the transaction, which could be gathered from the relationship between parties, their conduct previous and subsequent to the transaction, source of money for purchase, possession of the property, possession of the title documents, repayment of loan, etc. etc."*

26. In the present case, it is not the allegation of the complainant - husband that money was sent by him from Kuwait to the wife so as to purchase the property in his (complainant's) name. Allegations to that effect are against the father-in-law Gurcharan Singh that he was to purchase the property in the name of the complainant-respondent No.2 but instead of doing so, he purchased the same in his daughter's name i.e. in the name of petitioner-wife. So, no criminal act of petitioner is alleged.

27. Still further, there is no evidence of any entrustment to attract Section 406 IPC. Section 405 of the IPC defines criminal breach of trust as under:-

> *"**405. Criminal breach of trust.**—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust"*

28. A careful reading of Section 405 shows that the ingredients of a criminal breach of trust are as follows:

> i) A person should have been entrusted with property, or entrusted with dominion over property;
> ii) That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; and
> iii) That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge or such trust.

29. **Thus, Entrustment is an essential ingredient of the offence.** A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.

30. Merely on the allegation that property has been purchased in the name of wife from the money sent to her family, it cannot be stated that wife misappropriated the family money. Such allegations in the absence of any specific stand that husband had desired to purchase the property in his name, would not make out a criminal case against the wife. In ***Prof. R.K. Vijayasarathy's case (supra),*** the Hon'ble Supreme Court after quoting Section 405 IPC held as under:-

> *17.The condition necessary for an act to constitute an offence under Section 405 of the Penal Code is that the accused was entrusted with some property or has dominion over property. The first respondent has stated that the disputed sum was transferred by the son of the appellants of his own volition to her. The complaint clearly states that the amount was transferred for the benefit of the son of the appellants and that the first respondent*

> *was to hold the amount 'in trust' for him. The complaint alleges that the money was transferred to the appellants 'as per the dicta' of the son of the appellants. There is on the face of the complaint, no entrustment of the appellants with any property."*

31. Apart from above, evidently dispute is civil in nature. As far as the shop or the plot purchased by the father of the petitioner in the name of the petitioner is concerned, regarding the same, complainant-respondent No.2 has already filed civil suits.

32. It is concluded from above discussion that the allegations *prima facie* do not make out a criminal offence against the petitioner-wife and the case is clearly covered by the guidelines numbers 1 to 3 laid down by the Hon'ble Supreme Court in case of ***Ch. Bhajan Lal's case (supra)*** and so, FIR in question and subsequent proceedings arising therefrom are liable to be quashed qua the petitioner.

33. As regards **CRM-M-12319-2021**, the record reveals that warrants of arrest against the petitioner were sought to be executed in India, though the prosecution was in the knowledge since beginning that she was residing in Canada. Annexure P-8 is the application dated 12.12.2018 for obtaining arrest warrants against the petitioner moved by S.H.O., Dhuri; whereas, Annexure P-9 is the copy of warrants of arrest issued by the Court of Sub Divisional Judicial Magistrate, Dhuri on 08.01.2019. These reveal that warrants were executed so to arrest the petitioner at the address of Village Babrian Road, Dhuri. Annexure P-10 is the report dated 30.01.2019 submitted by ASI Malkit Singh to the effect that when he visited the given address, petitioner Sakinder Kaur was not found, rather her brother Jatinder Singh was present, who told that his sister was residing abroad. In spite this report, the proclamation

under Section 82 Cr.P.C. was served at the address of village Babrian Road, Dhuri and based thereon, petitioner was declared proclaimed offender on 25.04.2019 as per Annexure P-11.

34. Section 82 Cr.P.C. 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) to (6) xxxxxxx (not relevant)"*

35. The above said provision makes it clear that as to how the proclamation is to be published. A copy of proclamation is to be publicly read in some conspicuous place of the town or village, in which the concerned person ordinarily resides. It has to be affixed to a conspicuous part of the house or homestead in which said person ordinarily resides or to some conspicuous place of such town or village.

36. In the present case, ever since March, 2017, petitioner was residing in Canada and had never come to India and so there was no sense to effect her service either through warrant of arrest or through proclamation in India. There is nothing on record to suggest that any effort was made to publish the proclamation in any manner whatsoever in Canada.

37. In "***Rajiv Mehta v. State of Punjab",*** reported as 2015(4) R.C.R.(Criminal) 340, it has been held by this Court as under:-

> *"13. It has again gone undisputed on record that the petitioners were staying abroad when the impugned FIR was registered against them.* ***Despite knowing fully well that the accused were not residing in India, complainant respondent No.2 gave Indian addresses of the petitioners. Whenever any notice was issued to the petitioners, it was issued at their Indian address and they were never informed at their residential addresses of England, because of which they came to be declared proclaimed offenders by the learned Magistrate,*** *by passing the impugned order dated 11.3.2011 (Annexure P-4).*

38. After making above observations, proclamation proceedings were quashed. Similar view has been taken ***"Nitin Jindal v. State of Punjab and another",*** *(CRM-M-50216 of 2022, decided on 14.11.2022);* ***"Naresh Kumar v. State of Haryana"*** *(CRM-M-17413-2020, decided on 18.04.2022);* ***"Gurbir Singh Mundi v. State of Punjab and another",*** *(CRM-M-49283-2021, decided on 16.12.2021):"****Harvinder Singh v. State of Haryana and another"****, 2021(1) R.C.R. (Criminal) 493;* ***"Narinder Singh and another v. State of Punjab and another",*** *2019(1) R.C.R.(Criminal) 741;* ***"Deepak Jagpal and another v. State of Punjab and another"*** *(CRM-M-3465 of 2017, decided on 15.05.2017); and*

"Mehar Singh and Anr. v. State of Punjab"*, 2010(2) R.C.R. (Criminal) 167.*

39. The contention of learned State counsel and Ld. Counsel for complainant-respondent No.2 that the petitioner was first required to submit to the jurisdiction of the Court, which issued proclamation and challenge the proceedings and that the petition for quashing is not maintainable, has no merit in the facts and circumstances of the present case, when notice of proclamation is found to be per se illegal and contrary to the provisions of Section 82 Cr.P.C.

40. In view of the entire discussion as above, both the petitions are hereby allowed. As such, FIR No.141 dated 31.08.2018, registered at Police Station Sadar Dhuri, District Sangrur (Annexure P-3), under Sections 420, 406 and 120-B of IPC qua the petitioner; and order dated 25.04.2019 passed by learned Judicial Magistrate, Dhuri, vide which the petitioner was declared as proclaimed offender in the said FIR and all the subsequent proceedings arising therefrom, are hereby quashed.

Photocopy of this order be placed on the connected case file.

February 21, 2023 **(DEEPAK GUPTA)**
sarita **JUDGE**

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