

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

118

CRM-M-13140-2023 (O&M)

Date of decision: 20.04.2023

Parshotam Lal alias Parshotam Ram alias Sonu

....Petitioner

Versus

State of Punjab and others

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Ms. Sarika Gupta, Advocate
for the petitioner

Mr. IPS Sabharwal, DAG Punjab

Mr. Ashish Nagar, Advocate
for respondent No.2

AMAN CHAUDHARY. J.

1. The present petition has been filed for quashing of order dated 27.08.2012 passed by learned Chief Judicial Magistrate, SBS Nagar, vide which the petitioner has been declared as proclaimed person in case of FIR No.172 dated 02.07.2009, registered under Sections 324, 148, 149 IPC at Police Station Banga, District SBS Nagar, in view of compromise dated 05.12.2022 (Annexure P-10).

2. Learned counsel contends that the petitioner had been granted regular bail and he continued to appear before the trial Court. However, in order to earn his livelihood, he went abroad and was declared a proclaimed offender without complying with the procedure as envisaged under Sections 82 and 105 Cr.P.C. A compromise had already been effected between the parties on 30.09.2013, whereafter a petition was filed bearing No.CRM-M-41829-2013 (Annexure P-4) was filed by the co-accused of the petitioner for quashing of the FIR which was allowed vide order dated 05.05.2014. Subsequently, there has again been a

compromise on 05.12.2020. She submits that non-appearance of the petitioner before the trial Court in the proceedings is neither wilful nor deliberate but for aforesaid reasons. He is ready and willing to surrender before the trial Court for which she prays for grant of one opportunity on or before 30.07.2023, as he is presently residing in U.K. Reliance is placed on the decisions 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 02.06.2022.

3. Learned State counsel opposes the petition by submitting that the impugned order is legal and valid and has been rightly passed by the learned trial Court on account of non-appearance of the petitioner.

4. Learned Counsel for the complainant affirms the factum of compromise that was arrived in 2013 as well as in 2022 and has no objection, if the prayer is accepted.

5. Heard.

6. 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.

7. In the case of **Jasbir Kaur** (supra), since the petitioner therein was a Non Resident Indian 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.

8. This Court in **Parminder Kaur Motay vs. State of Punjab and another**, CRM-M-49863-2022 decided on 31.10.2022 in somewhat similar circumstances, while setting aside the order, observed as under:-

“Adverting to the facts of the present case, the proclamation proceedings without effecting service upon the petitioner, who was residing abroad, were not justified. However, still it is incumbent upon her to join the proceedings, for the culmination of the same. Considering the fact that the absence of the petitioner being not willful or deliberate and her readiness and willingness to surrender; for which she is stated to be travelling to India; the dispute between the parties also having been compromised; based on which, even the FIR in question, qua other co-accused, i.e. her father and other family members, stands already quashed by this Court and a similar petition filed by the petitioner is pending; the fact that even the first motion statements of the petitioner made through her father, as her attorney holder and of the complainant-respondent No.2 have also been recorded on 10.10.2022, in the divorce petition filed by him; counsel for respondent No.2, who has caused appearance in the present matter, has also affirmed all the facts as stated by the learned counsel for the petitioner, to be correct; has given his no objection to the prayer made in the present petition, thus, no prejudice shall be caused to any of the parties, in case the petitioner is granted one opportunity, to surrender before the trial Court. Therefore, in order to secure the ends of justice and finding judgments referred to above, being applicable to the instant case, the present deserves to be allowed.”

9. 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.

10. Adverting to the facts of the present case, the proclamation proceedings against the petitioner residing abroad, without effecting service upon him, were not justified. However, it is still incumbent upon him to join the proceeding, for the culmination of the same. Considering the fact that the absence of the petitioner being not wilful or deliberate and his readiness and willingness

to surrender, in case he is granted one opportunity, to surrender before the trial Court. Therefore, in order to secure the ends of justice and finding judgments referred to above, being applicable to the instant case, the present deserves to be allowed.

11. In view of the facts and circumstances of this case and the judgments referred to above, the order dated 27.08.2012, Annexure P-9 declaring the petitioner as proclaimed person passed by learned Chief Judicial Magistrate, SBS Nagar is set aside, subject to deposit of Rs.25,000/- with Poor Patients Welfare Fund, PGIMER, Chandigarh and the petitioner is directed to surrender before the trial Court on or before 31.07.2023 and he be released on bail subject to furnishing fresh bail bonds.

12. Before parting with this order, it is made abundantly clear that in case the petitioner does not adhere to the aforesaid, the present petition shall be deemed to have been dismissed without any reference to this Court.

(AMAN CHAUDHARY)
JUDGE

April 20, 2023
M.Kamra

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