

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

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CRM-M-12876-2023

Date of Decision:23.03.2023

Balbir Singh Bains @ Gian Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present:- Mr. Parvinder Singh, Advocate for the petitioner.

AMAN CHAUDHARY J.(Oral)**CRM-13509-2023**

For the reasons mentioned in the application, the same is allowed.

The accompanying documents as Annexures P-6 to P-15 are taken on record.

Application stands disposed of.

Main case

Present petition has been filed for quashing /setting aside the order dated 16.05.2013 (P-3) passed by the learned Sub Divisional Judicial Magistrate (SDJM), Tohana, District Fatehabad, against the petitioner vide which he has been declared as Proclaimed Person, in Criminal Complaint case No.RBT-385 of 2007, dated 22.02.2007 under Sections 324, 325, 506, 34 IPC 1860 (P-1) and all other consequential proceedings arising therefrom.

Learned counsel for the petitioner contends that on account of a dispute of the petitioner with his real brother, a criminal complaint came to be registered

on 22.02.2007 wherein summoning order was issued on 11.05.2009; that the petitioner had left for Canada and without following the procedure as envisaged under Sections 82 and 105 of the Cr.P.C., he has been declared proclaimed person vide order dated 16.05.2013 (Annexure P-3). It is further submitted that in the report of publication submitted by Head Constable Janak Raj at Annexure P-14, it has been mentioned that the petitioner has gone abroad with his entire family and has not come back to the village since long. On the said basis, the statement was made before the Court on 17.04.2013 with regard to the execution of proclamation. He further submits that in the complaint the name of the petitioner is Gian Singh whereas the actual name of the petitioner as also reflected from his passport (Annexure P-4) is Balbir Singh Bains. Accordingly in the notice of proclamation also the name that has figured is Gian Singh. He therefore submits that order declaring petitioner as proclaimed person is illegal. During the interregnum, the co-accused of the petitioner have since been acquitted by the learned Trial Court vide judgment dated 10.03.2014 (Annexure P-5) on the ground that genesis of the occurrence has not been proved. The absence of the petitioner is neither willful nor deliberate and he is ready and willing to join the proceedings even if the same is subject to cost. He prays for one opportunity to be granted to the petitioner to appear and surrender before the trial Court.

Notice of motion.

Mr. Tanuj Sharma, AAG, Haryana, accepts notice on behalf of the respondent-State. He states 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.

Since no order that may prejudice the interest of the private respondents is proposed to be passed, therefore, there is no necessity of issuing notice to them to seek their response at this stage.

Heard.

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.

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

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 because 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.”

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.

Adverting to the facts of the present case, the proclamation proceedings without effecting service upon the petitioner, as envisaged by Sections 82 and 105 CrPC, who was residing abroad, were not justified. However, still it is incumbent upon him 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 his readiness and willingness to surrender; for which he is stated to be in India, 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.

In view of the facts and circumstances of this case and the judgments referred to above, order dated 16.05.2013, Annexure P-3 declaring the petitioner as proclaimed person is set aside, subject to the deposit of Rs.25,000/- with the

trial Court, for it to be disbursed to the complainant and also to surrender before the trial Court on or before 05.04.2023. He shall also file an application before the trial Court for grant of bail, which shall be decided expeditiously.

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

23.03.2023
shweta/S.Sharma(syr)

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