

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

268

CRM-M-14310-2022 (O&M)

Date of decision: 16.02.2023

KAMALJIT SINGH @ HARKAMAL SINGH

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. L.S. Mann, Advocate for the petitioner.

Mr. Kamalpreet Bawa, AAG Punjab.

AMAN CHAUDHARY. J.

Present petition has been filed for quashing of impugned order dated 23.04.2018, Annexure P-6 passed by SDJM, Nakodar whereby the petitioner was declared as proclaimed person.

Learned counsel contends that the petitioner was residing abroad and was not served as per provisions of Section 82 and 105 Cr.P.C. However, the petitioner was declared proclaimed person vide Annexure P-6 dated 23.04.2018. The absence of the petitioner in the proceedings was neither willful nor deliberate. The petitioner had neither concealed himself nor absconded to avoid the service of summons /notice issued by the learned trial Court. To buttress his submission, he places reliance on the judgments of this Court in **Gurbir Singh Mundi vs. State of Punjab and another** CRM-M-49283-2021, decided on 16.12.2021.

Learned counsel further submits that in pursuance of order dated 06.04.2022 passed by this Court, the petitioner had surrendered before the

trial Court on 12.04.2022 and had also deposited an amount of Rs.50,000/- and was released on bail.

On the other hand, learned State counsel submits that the impugned order has rightly been passed on account of non appearance of the petitioner.

Heard.

On 06.04.2022, this Court had passed the following order-

"Prayer in this petition is for quashing of order dated 23.04.2018 (Annexure P-6), vide which the trial Court has declared the petitioner a proclaimed person in case FIR No. 146 dated 26.07.2016, registered under Sections 434, 447, 427, 34 of the IPC at Police Station Nakodar, District Jalandhar.

Learned counsel for the petitioner submits that without following the procedure under Section 82 Cr.PC, the petitioner has been declared a proclaimed person in aforesaid proceedings as after the registration of the FIR, he was residing abroad and was never served with the summons.

Learned counsel further submits that the petitioner is ready to surrender before the trial Court within a period of 15 days from today. It is further submitted that the marriage of the petitioner is fixed for 08.04.2022, therefore, the arrest of the petitioner may be stayed in order to enable him to perform his marriage.

Notice of motion for 24.05.2022.

In the meantime, the petitioner is directed to appear before the trial Court within a period of 15 days from today and on doing so, the trial Court will release him on interim bail, subject to his furnishing fresh bail/surety bonds to its satisfaction.

Till the time the petitioner appears before the trial Court, his arrest shall remain stayed.

However, this will be subject to a condition that petitioner will deposit a cost of Rs. 50,000/- with the Punjab and Haryana High Court Lawyers' Welfare Association.

The petitioner will produce the receipt of the payment of aforesaid cost before the trial Court at the time of furnishing bail/surety bonds."

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 petitioners therein as proclaimed persons on the ground that declaration was not read publicly in some conspicuous place of town or village, in which the accused ordinarily resides.

Adverting to the facts of the present case inasmuch the petitioner was never served as per provisions of Sections 82 and 105 Cr.P.C., thus could not appear before the trial Court, which appears to be justified explanation of absence. At times, the accused can be prevented by sufficient reasons such as no effecting of service as in the present case, to put an appearance before the Court, as such absence cannot necessarily be construed as deliberate and willful. However, it is incumbent upon them to join the proceedings, before the trial Court, for the culmination of the same. Thus, keeping in view the facts and circumstances of this case that the petitioner had joined the proceedings in compliance of the order passed by this Court and the judgment referred to hereinabove being applicable to the

instant case, and to make the ends of justice meet, the present petition deserves to be allowed.

Accordingly, the impugned order dated 23.04.2018, Annexure P-6 is set aside and consequential FIR No. 146 dated 26.07.2016, registered under Sections 434, 447, 427 and 34 IPC registered at Police Station Nakodar, District Jalandhar is hereby quashed.

(AMAN CHAUDHARY)
JUDGE

16.02, 2023

Mehak

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