

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

116 (II)

CRM-M-13352-2023 (O&M)

Date of decision: 17.03.2023

MANDEEP KUMAR

....Petitioner(s)

Versus

STATE OF PUNJAB AND ANR

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Saurav Bhatia, Advocate
for the petitioner.

AMAN CHAUDHARY. J.

Present petition has been filed for quashing of order dated 04.03.2014 passed in FIR No.172 dated 02.07.2009 under Sections 324, 148 and 149 IPC registered at Police Station Banga, District Shaheed Bhagat Singh Nagar, vide which the petitioner was declared as proclaimed person and quashing of order dated 08.05.2014, whereby the learned trial Court has directed that file be taken up as and when the petitioner is arrested or produced before the learned trial Court.

Learned counsel inter alia contends that in the FIR that was registered against him and 5 other co-accused, he was regularly appearing before the trial Court and absented on 25.09.2013, Annexure P-5, whereby his bail was cancelled and bail bonds and surety bonds were forfeited to the State and non-bailable warrants were issued against him. He submits that the petitioner had left the country in August, 2013 and has returned only on 01.02.2023 from Dubai, where he was working as a contractual labour, for which a reference is made to Annexure P-12, which are his air tickets and Annexure P-12, the passport. It is his

submission that during the interregnum, there was a compromise that was arrived at between the parties and the statement by the complainant was also recorded before the trial Court on 24.12.2013, Annexure P-3, that he has no objection, if the FIR lodged by him and subsequent proceedings are quashed. His co-accused accordingly had filed CRM-M-41829-2013, Annexure P-4, for seeking quashing of FIR based on compromise, which was allowed on 05.05.2014. He further submits that the procedure as envisaged under Sections 82 and 105 Cr.P.C. has not been followed for summoning the petitioner as he was residing in Dubai despite the fact that there was a report during the proclamation proceedings dated 23.01.2014. Annexure P-10, specifically noticing the fact that the petitioner was abroad, thus the proclamation proceedings being in violation thereof are liable to be set aside. To buttress his submission, he places reliance on the judgments of Coordinate Benches of this Court 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 2.6.2022. Learned counsel submits that non-appearance of the petitioner before the trial Court in the proceedings is neither willful nor deliberate but for reasons aforesaid. He prays for one opportunity to be granted to him to appear and surrender before the trial Court.

Notice of motion.

Mr. Manipal Singh Atwal, DAG Punjab accepts notice on behalf of the respondent-State.

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 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.”

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, 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, 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, the order dated 04.03.2014, 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 the Chandi Kusht Ashram, Sector 47-B, Chandigarh. The petitioner is directed to surrender before the trial Court on or before 30.03.2023 before the trial Court and in case he files an application for seeking bail, the same 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

March 17, 2023

M.Kamra

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