

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

(206)

**CRM-M-17705-2022
Date of Decision: 16.03.2023**

Swedeeep Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr.V. S. Rana, Advocate, for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

HARKESH MANUJA, J.(ORAL)

By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of FIR No.6 dated 12.02.2021 under Section 174-A IPC, registered at P.S. NRI, District SAS Nagar (Annexure P-5) as well as the order dated 14.01.2021 passed by the Court of JMIC, Mohali, whereby, the petitioner was declared as proclaimed offender.

The facts of the case are that the petitioner having married the son of the complainant on 05.11.2016, thereafter left for New Zealand for the purpose of higher studies. FIR No.22 dated 11.10.2018 under Section 420 IPC came to be registered against her as well as her relatives at Police Station, NRI, SAS Nagar, Mohali. The factum of petitioner being at New Zealand was even mentioned in the FIR itself, however, based on the proclamation dated 12.11.2020 (Annexure P-3 Page-45A), the petitioner was declared as proclaimed offender under Section 82(1) Cr.P.C., vide order dated 14.01.2021 thereby, resulting into registration of FIR No.6 dated 12.02.2021 under Section 174-A at Police Station NRI, SAS Nagar, against her.

Challenging the P.O. proceedings as well as the FIR No.6 dated 12.02.2021, registered under Section 174-A IPC, learned counsel for the

petitioner submits that the petitioner being in New Zealand, the proceedings

under Sections 82 Cr.P.C. could not have been effected at her local address of Village Mundi Kharar, SAS Nagar, Mohali. He further submits that the factum of the petitioner being in New Zealand was known to the complainant and thus, without making any effort of effecting service upon her as per procedure laid down under Section 105 Cr.P.C., she could not have been declared as proclaimed offender. Besides it, learned counsel also submits that complainant as well as petitioner and her family members entered into a settlement which has been reduced into writing dated 15.07.2021 (Annexure P-7) and based thereupon even a decree dated 01.02.2022 (Annexure P-10) under Section 13B of the Hindu Marriage Act already stands passed by the Court of Principal Judge, Family Court, SAS Nagar, Mohali and even a petition for quashing of FIR No.22 dated 11.10.2018 already stands filed before this Court vide CRM-M-23111 of 2022 which is pending for 23.03.2023.

On the other hand, learned State counsel submits that petitioner was having complete knowledge about the pendency of proceedings against her in pursuance to FIR No.22 dated 11.10.2018 and she was deliberately avoiding those and was thus, rightly declared as proclaimed offender.

I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of petitioner.

The factum of petitioner being in New Zealand has duly been mentioned even by the complainant herself while recording FIR No.22 dated 11.10.2022, registered at Police Station NRI, SAS Nagar, Mohali. This fact even finds mentioned in the proclamation issued under Section 82(1) Cr.P.C. by the Court of JMIC, Mohali. In view of the above, once the factum of petitioner being at New Zealand was duly known to the complainant as well as the trial Court, it was highly unjustified to have issued proclamation at the local address of the petitioner i.e. at Village Mundi Kharar, District SAS Nagar, Mohali, it was in fact a blatant non-compliance of Section 82 Cr.P.C.

The trial Court while passing the impugned order dated 14.01.2021 was perhaps oblivious of the fact that Section 82 Cr.P.C. restricts/regulates the liberty of an individual and thus stemming from Article 21 of the Constitution of India, has to be treated as mandatory and inviolable. My aforesaid view can also be derived from the decision made by this Court in the case of **Inderjit Singh Dhaliwal Vs. State of Punjab and Another** passed in **CRM-M-28280 of 2019** dated 27.02.2023.

In view of the discussion made hereinabove as well as the position of law enunciated in the aforementioned case of **Inderjit Singh Dhaliwal** Supra, present petition is allowed. Order dated 14.01.2021 declaring the petitioner as proclaimed offender as well as the consequential FIR No.6 dated 12.02.2021 recorded under Section 174-A IPC at Police Station NRI, SAS Nagar, Mohali, are hereby quashed. More than that, parties have already settled their dispute followed by grant of decree of divorce dated 01.02.2022 based on the mutual consent, under Section 13B of the Hindu Marriage Act, 1955, passed by the Court of Principal Judge, Family Court, SAS Nagar, Mohali.

8. The aforesaid order shall however, be subject to payment costs of Rs.50,000/- to be deposited with the Punjab and Haryana High Court Association Lawyer's Family Welfare Fund having Account No.41564846387 with State Bank of India, High Court Branch, Chandigarh, within a period of two weeks from today.

Petition stands disposed of

(HARKESH MANUJA)
JUDGE

16.03.2022
anil

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