

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17702-2023(O&M)
Date of Decision: April 13, 2023

SUKHNAM SINGH

..... Petitioner

Versus

STATE OF PUNJAB AND ANR

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vivek K. Thakur, Advocate for the petitioner.
Mr. Tarun Aggarwal, Sr. D.A.G. Punjab

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 482 CrPC, prayer has been made for quashing of FIR No.15 dated 13.02.2001 registered under Sections 411, 457 and 380 of IPC at P.S. Bholath, district Kapurthala as well as the order dated 28.02.2002 passed by Ld. JMIC, Kapurthala whereby the petitioner was declared as proclaimed offender.

At the outset, learned counsel for the petitioner submits that he is not pressing the present petition as regards respondent No.2 for the reason that respondent No.2 had already deposed before trial Court as PW1 and has supported the prosecution version.

Mr. Tarun Aggarwal, Sr. D.A.G. Punjab appears on behalf of respondent No.1-State.

In view of the aforesaid submission made by learned counsel for petitioner, the prayer made is allowed and the present petition thus merely survives qua respondent No.1 only.

Challenging the registration of aforementioned FIR as well as order dated 28.02.2002 passed by Court of Ld. JMIC, Kapurthala whereby the petitioner was declared as proclaimed offender, learned counsel for the petitioner submits that post registration of the aforementioned FIRs having been granted the concession of regular bail by the trial Court, the petitioner went abroad in July 2001 in relation to his employment and this fact was even in the notice of trial court as depicted from the order dated 29.11.2001, still the proceedings under Section 82 of CrPC regarding issuance of proclamation were carried out without even calling for his fresh address. Besides it, learned counsel also submits that on the basis of the same evidence led by the prosecution at the earlier instance, the other co-accused already stand acquitted by the trial Court vide judgment dated 13.12.2003 which has become final.

On the other hand, learned State counsel has vehemently opposed the prayer made in the present petition while submitting that having been granted concession of regular bail by trial court, the petitioner went abroad without even seeking permission and had tried to evade the process of law for a long period of 20 years.

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

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A perusal of the record shows that the petitioner was arrayed as accused in FIR which was registered against him besides few other persons on 13.02.2001 wherein challan was filed on 21.02.2001 and prior thereto, the petitioner was granted concession of bail by the trial Court. Post filing of challan, an order dated 29.11.2011 passed by trial Court shows that the fact that the petitioner was not in India was in the notice of trial Court whereas, despite that, without referring to the provisions of Section 105 of CrPC, the trial Court ordered for issuance of proclamation under Section 82 of CrPC for 14.01.2002 to be the date of appearance. The order dated 29.11.2001 which has been handed over to me by the learned counsel for the petitioner today in Court at the time of hearing is reproduced hereunder:-

“All the accused on bail except Sukh Ram accused.

Challan received through transfer. It be registered. Non-bailable warrants of arrest of Sukh Ram accused received back. With the report that Sukh Ram son of Ajit Singh has gone abroad. So, I am of the considered opinion that no useful purpose would be served by issuing non-bailable warrants of arrest of accused Sukhram. Gurmit Kaur mother of accused Sukh Ram is also present and she also stated that her son has gone abroad. So, proclamation against the accused the accused under Section 82(2) CrPC be issued on 14.01.2002. Serving constable is directed to affix the proclamation on or before 14.12.2001 and to appear in the Court on 14.01.2002 for his statement. Surety Ajit Singh Waryam Singh is not present. He be served through bailable warrants in the sum of Rs.2000/- with one surety in the like amount. Case is now adjourned to 14.01.2002.”

In view of the aforesaid, once the petitioner was already abroad and this fact was brought to the notice of the trial Court, the proceedings under Section 82 of CrPC having been initiated against

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him for securing his presence at his local address were merely a futile exercise in the absence of any step having been taken to proceed under Section 105 of CrPC. The provisions of Chapter VI of CrPC govern the service and appearance of an accused before the Court concern and thus in a way regulate their right to life and personal liberty as enshrined under Article 21 of the Constitution of India and accordingly cannot be made applicable in a casual manner. Once the petitioner was stated to be abroad, his service was required to be effected through Embassy. Reference in this regard can be made to the case of **“Sukhbir Singh Malhi Vs. Gurdeep Singh”** and Another passed in CRM-M-868-2022(O&M). Relevant portion therefrom is reproduced hereunder:-

“Be that as it may, as averred in the present petition, the petitioner is residing in Canada since 23.10.2008, therefore, it was rather imperative, for the learned trial Magistrate concerned, to even if he intended to secure his appearance before him, or before any other Court of law, to ensure that personal service of the process of Court, became through, the Embassy of India, located in Canada, hence effected upon each of the accused including the petitioner herein. However, the afore evidence is grossly amiss. Consequently, when only valid personal service being made upon the accused by the executing officer concerned, through the Embassy of India, located at Canada, and, thereafter, theirs yet not recording their personal appearances, for the relevant purposes, before the learned Magistrate concerned, hence thereupon, it was validly open for the latter, to thereafter recourse the mandate of Sub-Section (ii) of Sub-Section (2) of Section 82 of CrPC, inasmuch as, after his receiving the report of the executing officer, his proceedings, to make an order for publication of the proclamation notice, in the daily newspaper, hence circulating in the area in which the accused ordinarily reside(s). However, neither the executing officer, has ensured

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that causing of personal service upon the accused at Canada, nor the learned Magistrate concerned, has ensured that any proclamation notice became served, upon, the accused at Canada, hence through the aegis of the Embassy of India, located in Canada.”

More than that, the other co-accused in the aforementioned FIR who faced trial were acquitted vide judgment dated 13.12.2003 passed by the Court of the then Ld. JMJC, Kapurthala. The relevant portion thereof is reproduced hereunder:-

“PW1 has further deposed that he did not join the police party for any proceedings during the investigation. He has also deposed that he did not know what recovery was effected from which accused. In his cross-examination PW1 has stated that he had no suspicion on any of the accused present in the Court. He has also stated that he do not know what recovery was effected from the accused present in the Court. As the only witness examined by the prosecution has not given any incriminating evidence against the accused, so recording of statement of the accused under Section 313 CrPC is dispensed with. As there is no incriminating evidence against the accused on the file so by giving the benefit of doubt to the accused, the accused are acquitted of the charge framed against them. Accused Sukhnam Singh son of Ajit Singh was declared proclaimed offender and proceeding shall be revived as and when he is arrested, case property be confiscated to the state and disposed of after the expiry period of filing of appeal or revision if any. File complete in all respects be consigned to the record room.”

Once the other co-accused have already been acquitted by the trial Court, the complainant having not supported the prosecution at all and there being no other additional evidence beyond that available against the petitioner, no useful purpose would be served by continuing with the proceedings arising out of the aforementioned FIR against the

petitioner. Reference in this regard may be made to the case of “**Sudo Mandal @ Diwarak Mandalv. State of Punjab 2011(2) R.C.R.(Criminal) 453**”.

Mere fact that the petitioner evaded the process of law for a period of 20 years cannot be considered against him as he was never served as per the mandatory procedure prescribed by Chapter VI of CrPC.

In view of the discussion made hereinabove, the FIR No. 15 dated 13.02.2001 registered under Sections 411, 457 and 380 of IPC at P.S. Bholath, District Kapurthala as well as the order dated 28.02.2002 passed by Ld. JMIC, Kapurthala whereby the petitioner was declared as proclaimed offender are thus hereby quashed.

The aforesaid shall however be subject to payment of cost of €500 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.

13.04.2023
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(**HARKESH MANUJA**)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>
