

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

CRM-M-26156-2021

Date of Decision:-10.08.2023

Sukhdev Singh.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Simranjeet Singh, Advocate for the Petitioner.

Mr. Harkanwar Jeet Singh, Assistant Advocate General, Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in this petition under Section 482 Cr.PC is for quashing of order dated 27.10.2011 (Annexure P-4) passed by Sub Divisional Judicial Magistrate, Phagwara in case titled as State Vs. Gurdip Kaur & Ors. in FIR No.22 dated 19.06.2011 under Sections 420/406 IPC and Section 24 of Immigration Act registered at P.S. Satnampura, District Phagwara and all consequential proceedings arising therefrom.

2. The brief facts of the case are that the aforementioned FIR came to be registered against the petitioner at the instance of Mahesh Chander with the allegations that the petitioner along with his co-accused had taken money from him (complainant) to settle the complainant in Italy. Sukhdev Singh received a sum of Rs.8 lacs and his wife had taken a sum of Rs.7 lacs. But despite the said amount having been paid, he (complainant) had not been sent abroad to Italy and on the other hand Sukhdev Singh (petitioner)

had absconded to America as he had two passports on different names. The copy of the FIR is attached as Annexure P-1 to the petition.

As the petitioner had not appeared to face proceedings, he was declared a proclaimed offender vide order dated 27.10.2011 (Annexure P-4). The said order was challenged only in March 2021 on the technicality that the procedure envisaged under Section 82 Cr.PC had not been followed.

3. When this matter came up for hearing on 12.07.2021 an adjournment was sought to argue the matter. Similarly another adjournment was sought on 08.09.2021. On 11.09.2021 notice was issued and the state was directed to file a response. The State sought two more opportunities to file the reply. Meanwhile, on 19.07.2023, the counsel for the petitioner on instructions stated in Court that the petitioner was ready and willing to join the proceedings and would be coming back to India on or before 15.08.2023. Thereafter, the matter was listed for today i.e. 10.08.2023 for further orders to be passed enabling the petitioner to come back. When this matter came up for hearing today, the counsel for the petitioner stated that he wished to withdraw this petition.

4. The Counsel for the State on the other hand contends that the petitioner has been playing hide and seek with the Court. He was declared a proclaimed offender way back in 2011 but chose to challenge the order now in 2021. Despite indulgence having been shown by this Court that the petitioner would be protected if he came back to face proceedings and an undertaking being given by the petitioner in terms of the order dated 19.07.2023, obviously the petitioner does not wish to come back and face proceedings. Therefore, the present petition ought to be dismissed on merits looking at the conduct of the petitioner alone.

5. I have heard learned Counsel for the parties and perused the record.

6. In **Narinder Pal @ Nandu Vs. State of Punjab & Anr. CRM-M-45553-2022 Decided on 16.03.2023** this Court has held as under:-

“ 6. Initially when this matter had come up for hearing on 29.09.2022, the counsel for the petitioner was asked to obtain instructions as to when the petitioner was likely to come back in order to face Trial as the question of the present petition being urged on merits while the petitioner was a proclaimed offender did not arise. An adjournment was sought and on 29.09.2022 the case was adjourned to 03.11.2022. On the said date the members of Bar were abstaining from work and the case stood adjourned to 02.02.2023. On the said date once again, the counsel for the petitioner was asked as to whether the petitioner was ready and willing to come back to face proceedings. He sought 04 weeks time to argue the matter and the case was posted for hearing on 14.03.2023. On 14.03.2023 an adjournment was sought once again and today the court has been informed that the petitioner does not wish to come back and wanted to withdraw the present petition.

7. A perusal of the sequence of events as narrated above could establish that despite being given ample opportunities to come back and face proceedings, the petitioner firstly undertook to return back but has subsequently expressed a desire to withdraw the instant petition. Quite obviously an attempt was to obtain an interim order and thereafter keep the matter lingering on one pretext or the other. The conduct of the petitioner must be deprecated. In fact, the filing of the present petition is completely frivolous as even if this Court did quash the order whereby the petitioner was declared a proclaimed offender, he would still not come back to face Trial as was evident from the statement made by his counsel that the petitioner did not wish to return back.

8. In view of the above, I find no merit in the present petition and, therefore, the same is hereby dismissed.”

In **Iqbal Singh Sumbal Vs. State of Punjab & Ors. CRM-M-**

24987-2022 Decided on 01.05.2023 this Court has held as under:-

“ 7. Coming back to the facts of the instant case, it may be relevant to note that on 02.06.2022 notice of motion was issued and the matter stood adjourned to 10.10.2022. On that date the petition was adjourned for 14.03.2023 on which date the following order was passed:-

“ The learned Counsel for the petitioner submits that the petitioner shall be back in India positively by the first week of May 2023.

Adjourned to 01.05.2023.

To be shown in the ***Urgent Cause List.***”

When the matter came up for hearing today, the counsel for the petitioner submitted that the petitioner was unable to come back to face proceedings on account of the fact that his passport was expiring. Further, on a query, no satisfactory answer has been given by him as to when the petitioner would return back to face proceedings.

8. The aforementioned facts would show that firstly, this is the second petition for quashing of the FIR, the first having been dismissed on 6.3.2007. It has been filed through a power of attorney without any exceptional circumstances having been disclosed other than the fact that the petitioner was of the age of 73 years and a resident of Canada. Interestingly, the co-accused of the petitioner were acquitted in the year 2014 whereas the present petition for quashing of the FIR has been filed in the year 2021, 07 years after the judgment of acquittal. Even otherwise, mere acquittal of the co-accused would not be a ground to quash the instant proceedings and the petitioner would have had to come back to face trial as had been undertaken by him but has chosen not to do so despite this Court willing to stay the operation of the order dated 11.04.2012 (Annexure P-2) thereby enabling the petitioner to join proceedings.

9. In view of the aforementioned facts and the conduct of

the petitioner, I find no reason to quash either the FIR or the order whereby the petitioner has been declared as a proclaimed offender. Resultantly, the present petition stands dismissed.”

7. As has already been enumerated hereinabove, the petitioner was declared a proclaimed offender in 2011. He filed the instant petition in March 2021. The same came up for hearing in July 2021 and the notice came to be issued in November 2021. Meanwhile the counsel for the petitioner on instructions had informed the Court on 19.07.2023 that the petitioner was ready and willing to come back to face trial. Interestingly the prayer now has been made to withdraw the instant petition because apparently the petitioner does not wish to come back to join proceedings.

8. The Conduct of the petitioner leaves a lot to be desired. He chose to file the instant petition with a view to obtain an interim order and keep the matter lingering on thereafter. However, even if the impugned order was quashed, the petitioner would not have come back to face Trial as is evident from his conduct now in as much as despite an opportunity being granted to him to return back to India he has chosen not to do so.

9. In view of the above, I find no merit in the present petition and therefore, the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

August 10, 2023
Vinay

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