

113/2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-3464-2016

Date of Decision: 13.09.2023

Surjit Thind and another

...Petitioners

vs.

State of Punjab and another

...Respondents

Coram : **Hon'ble Mr. Justice N.S.Shekhawat**

Present : Mr. Navjot Narang, Advocate with
 Mr. S.P.S.Sidhu, Advocate
 for the petitioners.

Mr. M.S.Joshi, Additional Advocate General, Punjab.

N.S.Shekhawat J. (Oral)

1. The petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure with a prayer to quash the order dated 01.12.2012 (Annexure P-3), passed by the Court of Judicial Magistrate 1st Class, Samana, whereby the petitioners were declared to be proclaimed offenders in a complaint case titled as "Gurtej Singh Vs. Surjit Singh and other", registered vide case No. SC/21TA/10.12.2013, under Sections 452, 323, 324, 34 of IPC.

2. Learned counsel for the petitioners contends that a false complaint (Annexure P-1) was filed by Gurtej Singh, complainant against the petitioners and four other accused. After the preliminary evidence was recorded, the Court of Sub-Divisional Judicial Magistrate, Samana passed the summoning order dated 08.03.2011 (Annexure P-2) and summoned the petitioners and other

accused to face the trial under Sections 323, 324, 452, 148, 149 of IPC. Learned counsel further contends that in fact, the complaint (Annexure P-1) had been filed by respondent No.1/complainant only with a view to harass and humiliate the petitioners. In reality, respondent No.2 and his four other co-accused had committed the murder of Darshan Singh son of Aroor Singh and a case vide FIR No.9, dated 03.01.2010 under Sections 302 and 34 IPC and Sections 25/27/30 of Arms Act, at Police Station Ghagga was ordered to be registered against them. Just to create a false defence in the said case, the complaint was filed by respondent No.2/complainant. Learned counsel further contends that in fact both the petitioners are real brothers and are non-resident of Indians. Even prior to summoning in the complaint case, they had gone back to Germany as they were not required by the police in any case. Even after their summoning, the petitioners were not in India and without effecting service on them by summons/warrants, they were ordered to be declared as proclaimed offenders illegally vide order dated 01.12.2012 (Annexure P-3), by the Court of Judicial Magistrate 1st Class, Samana. Learned counsel further contends that in case FIR No.9 dated 03.01.2010, the co-accused of the complainant, namely, Randhir Singh, Baldev Singh and Sukhpal Singh have been ordered to be convicted for the offences punishable under Sections 302, 324 and 34 IPC and were sentenced to undergo rigorous imprisonment for life vide judgment of conviction dated 05.07.2014 and order of sentence dated 08.07.2014, passed by the Court of Additional Sessions Judge, Patiala (Annexure P-4). Learned counsel further contends that on the other hand, the co-accused of the petitioners were also tried by the Court of Additional Sessions Judge, Patiala and vide judgement dated 29.09.2015, the Court of Additional

Sessions Judge, Patiala acquitted all the similarly placed co-accused of the petitioners. Learned counsel further contends that the petitioners were not in the country even prior to passing of the summoning order by the Judicial Magistrate 1st Class, Samana and they never visited India before declaration of proclaimed offenders. Even the co-accused of the petitioners have been acquitted on merits by the trial Court and the petitioners have been wrongly declared to be proclaimed offenders.

3. On the other hand, learned State counsel has vehemently opposed the submissions made by the petitioners on the ground that the petitioners had not appeared during the course of trial intentionally and were rightly declared as absconders. However, learned State counsel is not in a position to controvert the fact that the petitioners were abroad even prior to passing of the summoning order by the Judicial Magistrate and had not come back to India prior to declaration of the proclaimed offenders by the Judicial Magistrate.

4. I have heard learned counsel for the parties and perused the record.

5. The proclamation for an absconding persons is issued under Section 82 of the Code of Criminal Procedure and the same reads as under:-

“82. Proclamation for person absconding. --

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(1) xx xx xx xx xx xx xx

(2) xx xx xx xx xx xx xx

4. "In view of the above provisions of Section 82(1) Cr.P.C., it is clear that the publication was effected on 9.2.2013 and the accused was directed to appear in the Court as per that publication on 6.3.2013 which period was less than 30 days. Therefore, it cannot be held that by passing the impugned order on 13.3.2013, the publication has been effected as per the provisions of Section 82 Cr.P.C. There was no order in the publication for the accused giving specified time and place to appear on 13.3.2013. Therefore, this order is not as per law and the same is set aside".

6. In the present case, it is apparent from the record that even prior to passing of the summoning order dated 08.03.2011 (Annexure P-2) passed by the Court of Sub-Divisional Judicial Magistrate, the petitioners had gone to Germany and till the passing of the impugned order dated 01.12.2012 (Annexure P-3), passed by the Court of Judicial Magistrate 1st Class, Samana, the petitioners were residing in a foreign land. Consequently, they could never be served by way of summons/warrants by the trial Court. In fact, it was imperative for the Court to order service of the petitioners by summons/warrants, if it intended to secure their appearance before the Court of law and without ensuring the personal service, the petitioners could not have been declared as proclaimed offenders. Moreover, there is nothing on record to suggest that the personal service of the petitioners was effected through the Embassy situated in Germany and the said evidence is grossly amiss. Consequently, there was no valid personal service on the accused through Embassy of India, located in Germany nor there is any evidence to indicate that the petitioners had knowledge with regard to the pendency of the proceedings before the trial Court, the petitioners have been wrongly declared as proclaimed

offenders in the present case. Still further, in the present case, the co-accused of the petitioners have already been ordered to be acquitted by the trial Court also.

7. In view of the above discussion, the present petition is allowed and the impugned order 01.12.2012 (Annexure P-3), passed by the Court of Judicial Magistrate 1st Class, Samana along with all consequential proceedings arising therefrom, are hereby ordered to be quashed.

13.09.2023.
hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No