

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

236

CRM-M-23433-2023(O&M)
Date of decision: 29.09.2023

Lakha Singh

...Petitioner

Versus

State of Punjab and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. P.S. Dhaliwal, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

Mr. K.S. Siwach, Advocate for
Mr. Sandeep Singh, Advocate for respondent No.2

AMAN CHAUDHARY, J.

1. The present petition has been filed for quashing of order dated 29.09.2016 passed by learned Judicial Magistrate 1st Class, Barnala, vide which the petitioner has been declared as proclaimed person in case of FIR No.9 dated 28.01.2014, registered under Sections 420 and 120-B IPC at Police Station Tallewal, District Barnala.
2. Learned counsel contends that the petitioner had left India in the year 2011 and has never returned since then, to substantiate which, a reference is made to the copy of the passport, Annexure P-2. The procedure as envisaged under Sections 82, and 105 Cr.P.C. has not been followed for summoning the petitioner as he was residing abroad. During the interregnum, the co-accused of the petitioner have been acquitted by giving benefit of doubt vide judgments dated 02.03.2020 and 07.10.2022, Annexures P-4 and P-5. There is a compromise that has been arrived at between the parties and the

FIR itself has been quashed vide order of even date in CRM-M-22004-2023 based on compromise, after receipt of report of the trial Court wherein statements of the parties had been recorded as per the direction of this Court. The non-appearance of the petitioner before the trial Court in the proceedings was neither wilful nor deliberate but for aforesaid reasons. Reliance is placed on the decisions in **Sukhman Singh vs. State of Punjab and Another** in CRM-M-17702-2023, decided on 13.04.2023, **Kuldip Singh Jaswal vs. Jaspal Singh**, 2015(45) RCR (Criminal) 991, **Harwinder Singh vs. State of Punjab**, 2023(1) Law Herald 373 and **Daljit Singh vs. State of Punjab**, CRM-M-50611-2021, decided on 03.12.2021.

3. Learned State counsel opposes the petition by submitting that the impugned order is legal and valid and has been rightly passed by the learned trial Court on account of non-appearance of the petitioner.

4. Learned Counsel for the complainant affirms the factum of compromise as well as the FIR itself being quashed and has no objection, if the prayer is accepted.

5. Heard.

6. It is apposite to make a reference to the judgments of this Court in the cases of **Jasbir Kaur vs. State of Punjab and another**, CRM-M-25115-2022, decided on 02.06.2022 and **Parminder Kaur Motay vs. State of Punjab and another**, CRM-M-49863-2022 decided on 31.10.2022, wherein the petitioners, who were residing in abroad, while proclamation proceedings had been initiated in India and the prescribed procedure was not followed, as such, the orders of proclamation were set

aside, permitting them to surrender before the trial Court.

7. In **Hardev Kaur vs. State of Punjab** 2018(2) Law Herald 1256, the order of proclamation was set aside in a case, where the compromise had been arrived at between the parties and no objection had been given by the complainant for setting aside the same.

8. This Court in **Sukhnam Singh** (supra) wherein the petitioner had gone abroad without seeking permission was declared proclaimed offender, observed that mere fact of petitioner having 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 and the fact that co-accused had been acquitted, thus by relying on judgment in **Sudo Mandal @ Diwarak Mandal vs. State of Punjab**, 2011(2) RCR (CrI.) 453, quashed the FIR as well as the order declaring him proclaimed offender.

9. Hon'ble The Supreme Court in the case of **Jaswant Singh vs. State of Punjab**, 2021 SCC OnLine SC 1007, allowed the appeal quashing the impugned proceedings arising out of FIR by observing thus:

“e) The complainant Nasib Singh entered into a compromise with the main accused Gurmeet Singh which was filed before the learned Magistrate and the same was accepted vide order dated 26.09.2014 and the alleged offence being of financial transaction stood compounded. Proceedings against Gurmeet Singh were closed.

f) Right from 2014, the present appellant and other co-accused Gurpreet Singh who were in Italy were being summoned by the Court. The appellant was declared proclaimed offender. The appellant applied before the High Court challenging the order declaring him proclaimed offender and also filed a 482 Cr.P.C. petition for quashing of the proceedings wherein, he also filed the compounding order of 26.09.2014.

g) The High Court merely perused the FIR and noting the fact that the name of the appellant was mentioned in the

FIR, declined to exercise the inherent power under Section 482 Cr.P.C.”

10. Adverting to the facts of the present case, the petitioner was declared proclaimed offender while he was abroad and apparently, the mandatory procedure as envisaged under Sections 82 and 105 CrPC was not followed, consequently his absence could not be termed to be wilful or deliberate. Moreso, during the interregnum, the remaining accused were acquitted by the trial Court vide judgments dated 02.03.2020 and 07.10.2022. As regards the petitioner is concerned, a compromise has been arrived at between the parties on 12.04.2023, based on which, CRM-M-22004-2023 was filed seeking quashing of FIR in question, wherein this Court vide order dated 02.05.2023 had directed the statements of the concerned to be recorded, whereupon the report of the Magistrate had been received, affirming the same to be genuine and without any undue influence or coercion, the petition was allowed vide order dated 29.09.2023, thereby quashing the said FIR.

11. Considering the facts and circumstances, the judgments referred to hereinabove and to meet the ends of justice, the impugned order dated 29.09.2016 alongwith all subsequent proceedings, deserves to be and is set aside.

12. The present petition is allowed accordingly.

(AMAN CHAUDHARY)
JUDGE

September 29, 2023
M.Kamra

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