

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

279

CRM-M-49550-2017 (O&M)

Date of decision: 16.01.2023

SUKHWINDER SINGH @ SUKHBIR SINGH @ SUKHA

....Petitioner(s)

Versus

STATE OF PUNJAB

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Deepak Sabherwal, Advocate
for the petitioner.

Mr. Kamalpreet Bawa, AAG Punjab.

AMAN CHAUDHARY. J.

Present petition has been filed for quashing of order dated 29.04.2015 (Annexure P-5), whereby the petitioner has been declared as proclaimed offender in case FIR No.51 dated 18.06.2014 under Sections 323, 324, 307, 34 IPC registered at Police Station Talwandi Chaudharian, District Kapurthala.

Learned counsel contends that the petitioner had left for Ghana on 17.10.2014 from where he returned on 02.07.2015. However, vide order dated 29.04.2015, Annexure P-5, he was declared as proclaimed offender. He filed the present petition challenging the said order, wherein vide order dated 24.01.2018, he was directed to surrender before the SHO, Police Station Talwandi Chaudharian. Learned counsel submits that in compliance of the said order, the petitioner had joined investigation on 29.01.2018. It is submission that challan has yet not been submitted. During the interregnum the co-accused, who were

convicted by the trial Court, had filed an appeal before this Court wherein a compromise had been arrived at, basis on which, the conviction was upheld, however, the sentence was reduced to the period already undergone. Learned counsel submits that even otherwise there is no evidence against the petitioner, it is thus that the challan has not been submitted. He further submits that the procedure as envisaged under Sections 41, 105, and 82 Cr.P.C. has not been followed for summoning the petitioner as he was residing in Ghana, thus the proclamation proceedings being in violation thereof are liable to be set aside. To buttress his submission, he places reliance on the judgment of this Court in **Jasbir Kaur vs. State of Punjab and another**, CRM-M-25115-2022, decided on 2.6.2022.

On the other hand, learned State counsel submits that the impugned order has rightly been passed on account of non appearance of the petitioner.

Heard.

In the case of **Jasbir Kaur** (supra), since the petitioner therein was a Non Indian Resident lady residing in Canada and proclamation proceedings had been initiated while she was not in India, as such, the order of proclamation was set aside.

Adverting to the facts of the present case, the proclamation proceedings without effecting service upon the petitioner, who was residing abroad as envisaged by the provisions, were not justified. At times, the accused can be prevented by sufficient reasons such as no effecting of service as in the present case, to put an appearance before the Court, as such absence cannot necessarily be construed as deliberate and willful. However, it is incumbent upon them to join the proceedings, before the trial Court, for the

culmination of the same. Thus, keeping in view the facts and circumstances of this case that the petitioner had joined the proceedings in compliance of the order passed by this Court and the judgment referred to hereinabove being applicable to the instant case, and to make the ends of justice meet, the present petition deserves to be allowed.

In view of the facts and circumstances of this case and the judgment referred to above, the order dated 29.04.2015 (Annexure P-4) is hereby set aside. Accordingly the present petition is allowed.

(AMAN CHAUDHARY)
JUDGE

January 16, 2023

S.Sharma(syr)

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