

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

119/2

CRM-M-25519-2023 (O&M)

Date of decision: 18.05.2023

Naveen Hans alias Raja

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Saurav Bhatia, Advocate for the petitioner

Mr. Manipal Singh Atwal, DAG Punjab

Mr. Khush Karan Goyal, Advocate for respondent No.2

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 of Cr.P.C. for quashing of order dated 21.07.2016, Annexure P-3 passed in FIR No.50 dated 11.06.2014 registered under Sections 420 and 120-B IPC at Police Station Koom Kalan, District Ludhiana, whereby the petitioner has been declared proclaimed offender and subsequent proceedings arising therefrom on the basis of compromise effected between the parties.

2. Learned counsel contends that the petitioner was declared a proclaimed offender without complying with the procedure as envisaged under Sections 82 and 105 Cr.P.C., as he was not in the country, reliance has been placed on the copy of passport, Annexure P-4. A compromise had already been effected between the parties, whereafter a petition bearing No. CRM-M-25515-2023 has also been filed for quashing of the FIR on the basis of compromise. He submits that non-appearance of the petitioner before the trial Court in the proceedings is

neither wilful nor deliberate. He is ready and willing to surrender before the trial Court for which he prays for grant of one opportunity. Reliance is placed on the decisions of **Gurbir Singh Mundi vs. State of Punjab and another** CRM-M-49283-2021, decided on 16.12.2021, **Hardev Kaur vs. State of Punjab** 2018(2) Law Herald 1256 and **Jasbir Kaur vs. State of Punjab and another**, CRM-M-25115-2022, decided on 02.06.2022.

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 having been arrived at between the parties and has no objection, if the prayer is accepted.

5. Heard.

6. In the case of **Gurbir Singh Mundi** (supra), it was held that provisions of Section 82(2) Cr.PC. are to be mandatorily complied with cumulatively and not alternatively. The Court had quashed the order declaring the petitioner therein as proclaimed person on the ground that declaration was not read publicly in some conspicuous place of town or village, in which the accused ordinarily resides.

7. In the case of **Jasbir Kaur** (supra), since the petitioner therein was a Non Resident Indian 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.

8. In the case of **Hardev Kaur** (supra), 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.

9. This Court in **Parminder Kaur Motay vs. State of Punjab and another**, CRM-M-49863-2022 decided on 31.10.2022 in somewhat similar circumstances, while setting aside the order, observed as under:-

“Adverting to the facts of the present case, the proclamation proceedings without effecting service upon the petitioner, who was residing abroad, were not justified. However, still it is incumbent upon her to join the proceedings, for the culmination of the same. Considering the fact that the absence of the petitioner being not willful or deliberate and her readiness and willingness to surrender; for which she is stated to be travelling to India; the dispute between the parties also having been compromised; based on which, even the FIR in question, qua other co-accused, i.e. her father and other family members, stands already quashed by this Court and a similar petition filed by the petitioner is pending; the fact that even the first motion statements of the petitioner made through her father, as her attorney holder and of the complainant-respondent No.2 have also been recorded on 10.10.2022, in the divorce petition filed by him; counsel for respondent No.2, who has caused appearance in the present matter, has also affirmed all the facts as stated by the learned counsel for the petitioner, to be correct; has given his no objection to the prayer made in the present petition, thus, no prejudice shall be caused to any of the parties, in case the petitioner is granted one opportunity, to surrender before the trial Court. Therefore, in order to secure the ends of justice and finding judgments referred to above, being applicable to the instant case, the present deserves to be allowed.”

10. The very purpose of issuance of non-bailable warrants, is to compel and secure the presence of the accused to face trial and establish the rule of law so as to ensure finalization of the proceedings.

11. Adverting to the facts of the present case, the proclamation proceedings against the petitioner residing abroad, without effecting service upon him, as envisaged by Sections 82 and 105 CrPC, were not justified. However, it is still incumbent upon him to join the proceeding, for the culmination of the same. Considering the fact that the absence of the petitioner being not wilful or

deliberate and his readiness and willingness to surrender, in case he is granted one opportunity, to surrender before the trial Court. Therefore, in order to secure the ends of justice and finding judgments referred to above, being applicable to the instant case, the present petition deserves to be allowed.

12. In view of the facts and circumstances of this case and the judgments referred to above, the order dated 21.07.2016, Annexure P-3 declaring the petitioner as proclaimed offender is set aside, subject to deposit of Rs.25,000/- with Poor Patients Welfare Fund at PGIMER Chandigarh and the petitioner is directed to surrender before the trial Court on or before 15.06.2023 and he be released on bail subject to furnishing fresh bail bonds.

13. Before parting with this order, it is made abundantly clear that in case the petitioner does not adhere to the aforesaid, the present petition shall be deemed to have been dismissed without any reference to this Court.

(AMAN CHAUDHARY)
JUDGE

18.05.2023
S.Sharma(syr)

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