

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

226

CRM-M-817-2017

Date of decision: 10.03.2023

TARSEM LAL

....Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Karan Matharu, Advocate
for the petitioner.

Mr. Kamalpreet Bawa, AAG, Punjab.

AMAN CHAUDHARY. J.

The present petition has been filed under Section 482 Cr.P.C. for quashing of FIR No. 124 dated 27.10.2009 under Sections 420 and 406 IPC registered at Police Station Goraya as well as order dated 03.06.2010, Annexure P-8 in view of the order passed, Annexure P-10 as well as clean chit given by Senior Police officer in two previous similar police complaints.

Learned counsel for the petitioner contends that at the time of the FIR which was lodged on 27.10.2009, the petitioner was in Spain as is also reflected in the FIR itself the allegations being that allegedly on the asking of the petitioner, his father had taken amount of Rs.1,50,000/- while the petitioner was not in the country. He was declared proclaimed offender on 03.06.2010 without following proper procedure as envisaged under Sections 41, 105 and 82 Cr. P.C. inasmuch as he was residing in Spain, the service ought to have been effected through the Indian Embassy but no service was effected upon him. He draws the attention of this Court to the provision of Section 105 of Criminal Procedure

Code (Cr.P.C) that provides for the procedure to serve summons and warrants to accused residing outside India.

During the interregnum, the co-accused Ram Lubhaya, father of the petitioner, has been acquitted vide judgment dated 19.10.2016, Annexure P-10 and an appeal against the said judgment also stands dismissed vide Annexure P-11 dated 16.01.2018 by the learned Sessions Judge, Jalandhar.

He seeks for withdrawal of the present petition qua the prayer for quashing of the FIR at this stage and restricts his prayer only to the challenge to the order whereby he was declared proclaimed offender on the ground of his service having not been effected as has been stated above. He is however ready and willing to surrender before the trial Court and join the proceedings within 10 days. He relies on CRM-M-25115-2022 titled as **Jasbir Kaur Vs. State of Punjab and another** decided on 2.6.2022 and CRM-M-3675-2021 titled as **Baljeet Singh Vs. State of Punjab**.

To fortify his submissions, learned counsel for the petitioner also places reliance on the judgments of this Court in **Jasbir Kaur Vs. State of Punjab and another**, decided on 2.6.2022..

Learned State counsel has not been able to controvert the above submissions and has no objection in the event the petition is disposed of in view of the limited prayer made by learned counsel for the petitioner for him to surrender before the trial Court.

Heard.

Admittedly, the procedure as contemplated by the provisions of Sections 82 and 105 CrPC were not complied with for effecting service upon the petitioner in the proceedings, that culminated in his having been declared as a

proclaimed person.

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.

This petition is hereby allowed to the extent of the restricted prayer of the petitioner. The impugned order dated 03.06.2010, Annexure P-8, is set aside, subject to payment of costs of Rs.25,000/- to be deposited with the Poor Patients Welfare Fund, PGIMER, Chandigarh, <https://pgimer.edu.in/>. In case the petitioner files an application for grant of bail, the trial Court shall decide the same expeditiously preferably within 2 days.

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

10.03.2023

Mehak

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