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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-31902-2023****Date of Decision:29.08.2023**

Lali Pal

...Petitioner

vs.

State of Punjab and Another

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat**Present :** Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Mohit Chaudhary, AAG, Punjab.

Mr. Randeep Singh, Advocate for
Mr.Arshdeep Singh Viridi, Advocate
for respondent No.2.

N.S.Shekhawat J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C with a prayer to quash the order dated 21.02.2019 (Annexure P-7), passed by the Court of Judicial Magistrate Ist Class, Batala, whereby the present petitioner was declared as proclaimed person.

2. While issuing notice of motion on 06.07.2023, this Court had noticed the following contentions on behalf of the present petitioner:-

“At the outset, learned counsel for the petitioner submits that he will confine his prayer only to the extent of quashing of order dated 21.02.2019 (Annexure P-7), vide which the petitioner was wrongly declared as a proclaimed person. He further contends that qua other reliefs, he may be permitted to withdraw his petition, at this stage.

Learned counsel for the petitioner contends that the FIR in

the instant case was registered on the basis of the statement made by one Deepak Sharma son of Bua Dass on 18.03.2015. During the course of investigation, the petitioner was declared to be innocent vide enquiry report dated 20.04.2015, which was approved by SSP, Batala. Ultimately, the final report under Section 173 Cr.P.C. was submitted only against Arun Kumar and Varun Kumar. Since the petitioner was declared innocent, he went abroad on 15.02.2017 and in support of the said contention, a complete copy of the passport of the petitioner has been annexed as Annexure P-3.

From a perusal of the passport, it is evident that after 15.02.2017, the petitioner had not come back to India till date. After the commencement of the evidence before the learned trial Court, the petitioner was summoned under Section 319 Cr.P.C. vide order dated 15.02.2018 (Annexure P-4). At the stage, when the petitioner was summoned as an additional accused to face prosecution along with other arrayed accused, he was abroad and was not aware of the summoning order. Ultimately, without following the due process of law and without serving summons on him, he was declared to be a proclaimed person vide impugned order dated 21.02.2019 (Annexure P-7). Learned counsel for the petitioner contends that no efforts were made to serve the petitioner through any Embassy in Italy, where he was residing and the entire process of declaring him proclaimed person was conducted at his back and the impugned order

has been passed by completely overlooking the mandatory provisions of Section 82 Cr.P.C.”

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

4. While referring to the submissions, as noticed above, learned counsel for the petitioner submitted that all the proceedings were conducted at his back and he was wrongly declared as proclaimed person. Even he contends that all the co-accused of the petitioner have already been acquitted by the Trial Court and even the chances of his conviction by the Trial Court are bleak as the prosecution is relying upon the same evidence against him. Learned counsel also referred to the law laid down in the matter of “**Jagjit Singh and Others Vs. State of Punjab**” CRM-M-51993 of 2021 (O&M) decided on 20.12.2021 as under:-

5. Moreover, since the petitioners, from the date of registration of the FIR (supra), and, upto now, are in a foreign land, and, hence they could not render cooperation to the investigating officer concerned, thereupon, it was imperative for the investigating officer concerned, to even if he intended to secure their appearances before him, or before the Court of law, to ensure that personal service of the process of Court, became through the embassy of India, located in U.K., hence effected upon, on each of the accused. However, the afore evidence is grossly amiss. Consequently, upon a valid personal service being made upon the accused by the investigating officer

concerned, through the embassy of India, located at United Kingdom, and, thereafter theirs yet not recording their personal appearances, for the relevant purposes, either before the investigating officer, or before the learned Magistrate concerned, thereupon it was open for the latter to thereafter seek issuance of non-bailable warrants, from the learned Magistrate concerned, and, also the afore process was required to become personally served upon the petitioners, at their abode, in U.K. However, neither the investigating officer, has ensured the causing of personal service upon the accused at U.K., prior to the issuance of nonbailable warrants, as issued by the learned Magistrate concerned, nor the learned Magistrate concerned, has ensured that the non-bailable warrants became served personally upon the accused at U.K., hence through the aegis of the embassy of India, located in U.K. The effect of the afore nonrecoursings, is, that the impugned order declaring the petitioners, as proclaimed offenders, becomes quashed, and, set aside.

5. On the other hand, learned State counsel is not in a position to dispute the above referred factual submissions, however, he submits that the petitioner had intentionally evaded the process of law and was not entitled to any discretionary relief.

6. In my considered opinion, the arguments of the learned counsel for the petitioner carry more weight. The order declaring the

petitioner as proclaimed person seem to have been passed by the Court in a mechanical manner as the Court had not bothered to look into the fact that the petitioner was already living abroad and was never served by the Investigating Agency. Moreover, the co-accused of the present petitioner have already been acquitted by the competent Court and the petitioner has been wrongly declared to be a proclaimed person.

7. Thus, the present petition is allowed and the order dated 21.02.2019 (Annexure P-7), passed by the Court of Judicial Magistrate Ist Class, Batala is ordered to be set aside.

29.08.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No