

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

256

CRM-M-28222-2019

Date of decision: 17.01.2023

Bir Harinder Singh

....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. G. B. S. Dhillon, Advocate
for the petitioner.

Mr. Kamalpreet Bawa, AAG, Punjab.

AMAN CHAUDHARY. J.

Present petition has been filed under Section 482 Cr.P.C. for quashing the order dated 15.07.2008 (Annexure P-15) and order dated 05.07.2012 (Annexure P-16) whereby the property of the petitioner is ordered to be attached by the Court of JMIC, Ludhiana and subsequent proceedings arising therefrom.

Learned counsel for the petitioner contends that the FIR was lodged on 24.12.2007, whereas the petitioner was staying in Canada for the last 20-25 years as specifically mentioned in para 6 of the petition. He further relies on the report of HC Jaspal Singh alongwith statement of witnesses namely Nirmal Singh and Jasvir Singh (Annexure P-9 to P-11 respectively) recorded on the same date wherein they had specifically stated that the petitioner has been residing in Canada from the last around 20/25 years. That, vide order dated 15.07.2008 (Annexure P-15), the petitioner was declared as proclaimed offender. Thereafter, order dated 05.07.2012 (Annexure P-16) was passed for attaching the property of the petitioner. The petitioner thereafter filed revision petition before the learned

Additional Sessions Judge (Annexure P-17) which was also dismissed without appreciating the submissions made on behalf of the petitioner. 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 Canada. 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. A further reference is made to a Notification issued by the Government of India Ministry of Home Affairs, IS Division-II:Legal Cell New Delhi, dated the 11th Feb, 2009, laying down comprehensive guidelines in this regard of reciprocal arrangements to be made by Central Government with the Foreign Governments with regard to the service of summons/warrants/judicial processes. The Ministry of Home Affairs has entered into Mutual Legal Assistance Treaty/Agreements with 22 countries including Canada which provide for serving of documents, thus the proclamation proceedings being in violation thereof are liable to be set aside. To buttress his submission, he places reliance on the judgments of this Court in **Jasbir Kaur vs. State of Punjab and another**, CRM-M-25115-2022, decided on 2.6.2022. Learned counsel submits that non-appearance of the petitioner before the trial Court in the proceedings is neither willful nor deliberate but for reasons aforesaid. He prays for two months time to surrender before the trial Court, which may even be subject to cost.

Learned State counsel opposes the present petition on the ground that the impugned order is legal and valid and has been rightly passed by the trial Court 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.

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.

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. However, still it is incumbent upon him 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 his readiness and willingness to surrender; for which he is stated to be travelling to India and in case the petitioner is granted one opportunity, to surrender before the trial Court no prejudice shall be caused to any of the parties rather his joining the proceedings shall help expedite the trial. Thus, in order to secure the ends of justice and finding the judgment referred to hereinabove, being applicable to the instant case, the present deserves to be allowed.

In view of the facts and circumstances of this case and the judgment referred to above, the order dated 15.07.2008, Annexure P-15 and order dated 05.07.2012, Annexure P-16 passed by learned Judicial Magistrate Ist Class, Ludhiana, are set aside subject to the petitioner surrendering before the trial Court on or before 15.03.2023 and depositing of Rs.25,000 with the Punjab & Haryana High Court Bar Association Lawyer's Family Welfare Fund Account No. 41564846387, SBI, High Court Branch. In case he surrenders and files an

application for seeking bail, the same shall be decided expeditiously.

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.

January 17, 2023
Mehak/S.Sharma(syr)

(AMAN CHAUDHARY)
JUDGE

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