

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

110

CRM-M-37446-2022 (O&M)

Date of decision: 13.01.2023

Vikranjeet Singh @ Vikram Singh

....Petitioner(s)

Versus

State of Punjab and others

Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Ranjan Lakhanpal, Advocate
for the petitioner.

AMAN CHAUDHARY. J.

CRM-1282-2023

For the reasons mentioned in the application, same is allowed subject to all just exceptions and Annexure A1 and A-2 are taken on record.

Main Case

Present petition has been filed for setting aside the orders dated 10.09.2019 (Annexure P-3) passed by JMIC, Samana in case FIR No. 92 dated 02.05.2014 under Sections 323, 506, 201 and 34 of the Indian Penal Code registered at Police Station Patran, District Patiala.

Learned counsel for the petitioner contends that the petitioner was implicated in the FIR in question dated 02.05.2014 wherein he was kept in column No. 2, whereafter had got admission in Conestoga College Institute of Technology and Advanced Learning, Ontario, Canada and he left for joining the studies, the viza has been also relied upon as Annexure A-2 granted as a student. Thereafter, the complainant has moved an application under Section 319 Cr.P.C. to summon the petitioner in which the order dated 02.08.2017 was passed by

JMIC, Samana (Annexure P-2). The proceedings of the petitioner being declared proclaimed offender was conducted without following proper procedure as the petitioner was never served nor any notice was received by him that he has been declared proclaimed offender.

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, thus the proclamation proceedings being in violation thereof are liable to be set aside. 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 one opportunity to be granted to him to appear and surrender before the trial Court.

Notice of motion.

Mr. Manipal Singh Atwal, DAG Punjab accepts notice on behalf of the respondent-State.

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, order dated 10.09.2019, Annexure P-3 is set aside subject to the petitioner surrendering before the trial Court on or before 14.02.2023 and depositing of Rs.25,000 with the Poor Patients Welfare Fund, PGIMER,

Chandigarh. 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.

(AMAN CHAUDHARY)
JUDGE

13.01.2023
Mehak /S.Sharma

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