

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M No.41513 of 2021
Reserved on: 05.09.2023
Pronounced on : 12.09.2023

Gurpiar Singh BrarPetitioner

Vs.

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Brijeshwar Singh Bhalla, Advocate for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
135	13.07.2008	City Moga, District Moga	218, 465, 420, 467, 468, 471, 472, 120-B IPC and 13(2) 88 of Prevention of Corruption Act and Passport Act

Seeking quashing of proclamation order dated 02.07.2018 (Annexure P-3), the accused has come up before this court under Section 482 of the Code of Criminal Procedure, 1973 (CrPC).

2. The accused-petitioner absented during trial and after that he could not be served through the ordinary process, including non-bailable warrants. The concerned court finally proceeded against the petitioner under section 82 of CrPC and declared the petitioner a proclaimed offender vide order dated 02.07.2018, when he failed to appear before the trial Court.

3. Petitioner’s stand is that proclamation issued without his fault for the reason that vide report No.24-PCR.SP (1) dated 30.05.2015, he had been declared innocent in inquiry after his arrest and after that, on inquiry from the police officials, they had assured him that he can travel abroad. On this, the petitioner left India in the year 2016 and has not returned back till date.

4. The present petition has been filed based on an affidavit which is attested by a Notary Public in USA. To answer this controversy reference be made to para 7 of reply dated 23.11.2021 which reads as follows:-

"7. That on the basis of said application enquiry was conducted by SP (Inv), Moga. During enquiry it was found that in the year of 2002 petitioner applied for issuance of a passport and on the basis of said application one passport bearing No. E-1143438 Dated 05.03.2002 was issued by the passport authority on the name of petitioner and said passport was valid upto 05.03.2012. During enquiry it was also found that petitioner had one Travel Agent namely Manjit Singh had got issued passport no. F-8528001 by affixing the photograph of the petitioner and some forged documents. During enquiry it was also found that said passport was neither recovered from the possession of petitioner nor petitioner has any concern or connection whatsoever with the said passport issued on forged documents. After completion of enquiry, the enquiry officer declared the petitioner to be innocent in this case vide enquiry report dated 30.05.2015."

5. Thus, it has been clearly stated in the reply of the State that Inquiry Officer had declared the petitioner innocent. Petitioner was certainly not residing at Indian address and as such it resulted in non-execution of warrants and subsequent proclamation proceedings. This position remains undisputed by the State.

6. In the entirety of facts and circumstances of the case, the petitioner cannot be found at fault at all for the reason that at the time when he had left India, he had been declared innocent in the present case by the police.

7. Given the fact that the petitioner was away from India and there was no knowledge to the petitioner about appearance as contemplated under section 82 CrPC, the order dated 02.07.2018 is arbitrary and did not afford reasonable opportunity as mandated under Section 82 of CrPC.

8. Given above, the impugned order dated 02.07.2018, passed the Additional Chief Judicial Magistrate, Moga, is set aside. Consequently, the non-bailable warrants issued against the petitioner in the FIR captioned above, shall not be enforced till 30.11.2023 and the petitioner is directed to appear before the concerned Court by 30.11.2023. Failure to do so, this order shall stand recalled automatically.

Petition allowed in the terms mentioned above. Pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

12.09.2023

anju rani

Whether speaking/reasoned: Yes

Whether reportable: No.