

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-43056-2021
Reserved On.: 20.09.2023
Pronounced On: 22.09.2023

Jatinder Kaur

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Pushp Jain, Advocate
for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

DEEPAK GUPTA, J. (ORAL)

By way of this petition filed under Section 482 Cr.P.C., petitioner prays for quashing order dated 20.12.2008 (Annexure P-2), declaring her as a proclaimed offender in case FIR No.129 dated 16.05.2006 registered at Police Station Division No.4, District Jalandhar under Sections 420, 465, 468, 471, 120-B of the IPC.

2. FIR was lodged on the complaint of Jaswant Singh, the brother of petitioner, as per which their father Harbans Singh was owner of a Royal Enfield motorcycle and that after his death, petitioner in collusion with her husband Salinder, on the basis of forged documents, got the said motorcycle transferred in her name and further sold the same.

3. Learned counsel for petitioner contends that the aforesaid FIR has

CRM-M-43056-2021

been lodged in her absence, inasmuch as she is residing in United Kingdom since much prior to registration of the FIR. Learned counsel has drawn attention towards Annexure P-6 to contend that petitioner resides in United Kingdom ever since 1999; whereas the FIR was lodged in 2006 and therefore, the proclamation notice issued at the local address of the petitioner, is *per se* illegal, as no notice/proclamation was ever effected at the address of the petitioner, where she is residing in United Kingdom.

4. Opposing the petition, learned counsel for respondent- State on the basis of reply filed in the court, submitted that during investigation, petitioner was declared proclaimed offender. Co-accused Salinder Singh i.e., husband of the petitioner was arrested, who faced trial but during trial, he expired on 8.1.2012 and so, file was consigned by the Trial Court on 20.12.2008.

5. Heard. Paper book perused.

6. Section 82 Cr.P.C. reads as under: -

“82. Proclamation for person absconding. — (1) *If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.*

(2) *The proclamation shall be published as follows: —*

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the

Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) to (6) xxxxxxxx (not relevant)”

7. The above said provision makes it clear that as to how the proclamation is to be published. A copy of proclamation is to be publicly read in some conspicuous place of the town or village, in which the concerned person ordinarily resides. It has to be affixed to a conspicuous part of the house or homestead in which said person ordinarily resides or to some conspicuous place of such town or village.

8. In present case, perusal of the documents placed on record by the petitioner reveals that initially petitioner was declared proclaimed offender on 08.11.2008, on the basis of proclamation having been served on 05.10.2008 issued vide order dated 01.10.2008 (Annexure P-4). The matter was adjourned for further proceedings to 20.12.2008, as per order dated 08.11.2008 but surprisingly, again the concerned Court of Judicial Magistrate 1st Class, Jalandhar on the basis of same proclamation effected on 05.10.2008, declared the petitioner as proclaimed offender on 20.12.2008 vide Annexure P-2. Annexure P-5 is the copy of the statement of serving constable dated 05.10.2008 revealing that he visited the house of the petitioner, where her husband was found and acknowledged about the P.O. notice; that one copy of the proclamation was affixed at the door of the accused; another copy at an ordinary place and one more copy at the notice board of the Court.

9. Further, Annexure P-6 is the copy of order dated 30.1.2019 passed

CRM-M-43056-2021

by First-tier Tribunal (Immigration and Asylum Chamber), Birmingham Civil Justice Centre (UK) in case titled as '*Ms Jatinder Kaur v. The Secretary of State of the Home Department*', the concluding part of which contains the finding to the effect that petitioner was residing in United Kingdom since 04.09.1999 and had remained there in United Kingdom despite expiration of her leave in 1999.

10. However, the proclamation notice as served at the local address, does not reveal as to whether petitioner was ever served at her address in United Kingdom. The status report filed by the police do not indicate that any effort was made to serve the petitioner at any point of time at her address in United Kingdom. The statement of the serving constable does not reveal that he publicly read the proclamation in some conspicuous place of the town or village in which the petitioner ordinarily resided. Thus, the mandatory provisions of Section 82 Cr.P.C. have not at all been complied.

11. In "***Rajiv Mehta v. State of Punjab***", reported as 2015(4) R.C.R. (Criminal) 340, it has been held by this Court as under: -

"13. It has again gone undisputed on record that the petitioners were staying abroad when the impugned FIR was registered against them. Despite knowing fully well that the accused were not residing in India, complainant respondent No.2 gave Indian addresses of the petitioners. Whenever any notice was issued to the petitioners, it was issued at their Indian address and they were never informed at their residential addresses of England, because of which they came to be declared proclaimed offenders by the learned Magistrate, by passing the impugned order dated 11.3.2011 (Annexure P-4).

After making above observations, proclamation proceedings were quashed.

CRM-M-43056-2021

12. Similar view has been taken in *“Nitin Jindal v. State of Punjab and another”*, (CRM-M-50216 of 2022, decided on 14.11.2022); *“Naresh Kumar v. State of Haryana”* (CRM-M-17413-2020, decided on 18.04.2022); *“Gurbir Singh Mundi v. State of Punjab and another”*, (CRM-M-49283-2021, decided on 16.12.2021); *“Harvinder Singh v. State of Haryana and another”*, 2021(1) R.C.R. (Criminal) 493; *“Narinder Singh and another v. State of Punjab and another”*, 2019(1) R.C.R.(Criminal) 741; *“Deepak Jagpal and another v. State of Punjab and another”* (CRM-M-3465 of 2017, decided on 15.05.2017); and *“Meher Singh and Anr. v. State of Punjab”*, 2010(2) R.C.R. (Criminal) 167.

13. Consequently, petition is allowed and the impugned order dated 20.12.2008 (Annexure P-2) as well as the previous order dated 08.11.2008, forming part of Annexure P-4, whereby petitioner was declared proclaimed offender, are hereby quashed.

14. However, petitioner is directed to surrender before the Trial Court concerned within a period of 02 months from today. The concerned Trial Court shall revive the proceedings and upon surrender of the petitioner, shall admit her to bail and proceed further with trial in accordance with law.

September 22, 2023

Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No