

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

268

CRM-M-35759-2019 (O&M)

Date of decision: 13.07.2023

Davinder Singh @ Ravinder Kumar

..Petitioner

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Prateek Pandit, Advocate for the petitioner.

Ms. Himani Arora, AAG, Punjab.

AMAN CHAUDHARY, J

1. The present petition has been filed under Section 482 CrPC for quashing of the impugned order dated 31.01.2019 (Annexure P-4) passed by learned CJM, Kapurthala vide which the petitioner has been declared proclaimed person in FIR No.95 dated 18.04.2012 registered under Sections 323, 324, 326, 427, 452, 482, 148 and 149 IPC at PS City, Kapurthala, District Kapurthala.

2. Learned counsel submits that it was a case of version and cross version. On the statement of the petitioner DDR No.2 dated 19.04.2012 under Sections 324, 323, 326, 34, 201 IPC was registered against respondent No.2 and his co-accused.

3. The parties were known to each other, thus, a compromise was arrived at on 14.11.2018 (Annexure P3). The petitioner was engaged in providing driving services outside of Kapurthala and was thus not aware of the fact that after almost 5 years the police has again initiated proceedings in the instant FIR. The petitioner was under bona fide belief

that in view of the compromise between the parties the police would have dropped the proceedings against the accused persons in the FIR as well as cross case. The petitioner was declared proclaimed offender without the service having been effected upon him in terms of Section 82 Cr.P.C. The absence of the petitioner is neither wilful nor deliberate and is on account of the reason aforesaid. Further that he is ready and willing to join the proceedings and it is prayed that one opportunity may be granted to him to surrender before the learned trial Court even if the same is subject to costs. Reliance is placed on the orders of this Court in CRM-M-38277-2022 dated 26.08.2022, in the case of **Surjit Singh vs. State of Punjab**, CRM-M-39000-2022, titled as **Raghav vs. State of Punjab**, decided on 09.09.2022 and CRM-M-36490-2022, titled as **Major Singh vs. State of Punjab**, decided on 15.9.2022.

4. Learned State counsel opposes the same by submitting 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.

5. No order prejudicial to the rights of the private respondents is being proposed to be passed by this Court, thus, there is no requirement for the notice to be issued to them.

6. Heard.

7. The very purpose of initiation of proclamation proceedings, is to compel and secure the presence of the accused to face trial and establish the rule of law, as also to ensure finalization of the proceedings.

8. Adverting to the facts of the present case, the reasons for non-appearance of the petitioner that led to the passing of the impugned

order, appear to be justified. At times, the accused can be prevented by sufficient reasons to put an appearance before the Court and such an absence cannot necessarily be construed as deliberate and wilful. However, it is incumbent upon him to join the proceedings, before the trial Court, for the culmination of the same. Considering the fact that the absence of the petitioner was not wilful or deliberate and his readiness and willingness to surrender and join the proceedings, in case one opportunity is granted to the petitioner, no prejudice shall be caused to any of the parties, rather his joining the proceedings would help in expediting the trial. Thus, in order to make the ends of justice meet and finding judgments referred to above being applicable to the instant case, the present petition deserves to be allowed.

9. In view of the afore-referred orders and the facts and circumstances of the case, the impugned order dated 31.01.2019, Annexure P-4 is set aside subject to surrender by the petitioner before the trial Court on or before 27.07.2023 and depositing Rs.5000/- with the trial Court, which shall further be disbursed to the complainant forthwith and furnish his fresh bail/surety bonds. On so doing, the trial Court shall release him on bail subject to its satisfaction. He is also directed to furnish an undertaking by way of an affidavit that he will appear on each and every date of hearing before the trial Court, unless specifically exempted by the Court. He shall not leave the country without prior permission of the Court. The trial Court may impose any other condition that it may deem appropriate in the facts and circumstances of the present case.

10. 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.

13.07.2023
ashok

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No