

S. No.107

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

CRM-M-42091 of 2020 (O&M)

Date of Decision:09.02.2023

Jagjit Singh and others

.....Appellants

Vs.

State of Punjab and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Bikramjit Singh Bajwa, Advocate
for the petitioners.

Mr. R.S. Khaira, DAG, Punjab.

Mr. P.S. Ahluwalia, Advocate for respondent
No.2.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C is to quash order dated 16.12.2019 (Annexure P.3) passed by learned Sub Divisional Judicial Magistrate, Beas, Amritsar, whereby petitioners were declared proclaimed offenders in case FIR No.158 dated 08.07.2019 registered at Police Station Beas, District Amritsar under Sections 323, 324, 336, 148 and 149 IPC and Sections 25 & 27 of the Arms Act besides Section 307 IPC (added later on).

2. It is contended that FIR in question was lodged on the statement of Iqbal Singh against Sukhwinder Singh and his other family members. It is alleged that due to wrong implication of the petitioners, wife of one Gurjit Singh had made a representation to SP (Investigation), who investigated the matter and declared the petitioners to be innocent. The District Attorney (Legal) also accepted the said finding. However, on one hand, petitioners were declared innocent, but on the other hand, they have been declared

CRM-M-42091 of 2020 (O&M)

proclaimed offenders by the Court. Petitioners further submitted that as they were declared innocent, so, they were not aware that they were required to present themselves before the Court. It is further submitted that as complainant came to know that petitioners had been declared innocent, he made representation and second inquiry was conducted in an illegal manner and petitioners were sought to be prosecuted. With these submissions, prayer is made to quash the impugned order and the subsequent proceedings.

3. Reply filed by the Deputy Superintendent of Police, Baba Bakala Sahib, Amritsar Rural on behalf of respondent No.1 – State reveals that in the FIR lodged by Iqbal Singh, allegations of assault were made against Sukhwinder Singh, Jagjit Singh alias Laddi (petitioner), Baljit Singh, Gurwinder (petitioner), Lovejeet and Shagandeeep (petitioner) and two other unidentified persons, attracting various provisions of IPC including Section 326 and 307 IPC besides Sections 25 & 27 of the Arms Act. As the accused in the FIR were absconding and concealing themselves in order to evade their arrest, so application was moved on 20.08.2019 before the Court concerned to initiate proclaimed offender proceedings. Warrant of arrest issued against the accused including the three petitioners failed to procure their presence and, so, proclamation under Section 82 Cr.P.C was directed to be issued on 13.09.2019 asking them to surrender on or before 16.12.2019. The said proclamation was duly effected on 01.11.2019 but petitioners failed to surrender till 16.12.2019 and so, they were declared proclaimed offenders.

4. It is further submitted by the respondent- State that on representation by wife of one of the accused Jagjit Singh, the matter was enquired into by SP (Investigation), who declared the petitioners as innocent vide his report dated

CRM-M-42091 of 2020 (O&M)

27.05.2020 but on the representation made by injured complainant- Iqbal, matter was re-investigated and all the accused were sought to be prosecuted including the petitioners. Since there were two representations, so Special Investigation Team was constituted by Superintendent of Police and again, all the accused were sought to be prosecuted.

5. Before this court, on the application moved by complainant of the case, namely, Iqbal Singh, he was joined as respondent No.2. In his reply, he submitted that the petitioners were wrongly declared innocent after already being declared as proclaimed offenders.

6. Vide order dated 16.12.2020, while issuing notice of motion, petitioners were directed to be released on interim bail subject to their surrendering before the trial Court within one week. It is contended by learned counsel for the respondents that the said order was obtained by concealing the material fact that anticipatory bail application of one of the petitioners had already been dismissed on 28.08.2019 by this High Court and further that petitioners had been declared proclaimed offender prior to finding them innocent in the first investigation. It is also pointed out by counsel for the respondents that though petitioners initially surrendered before the trial Court in view of order dated 16.12.2020 but later on one of them, namely, Shagandeep again became absent and has been ultimately declared proclaimed offender on 22.12.2022.

7. In reply to the above, it is stated by learned counsel for the petitioners that he is no longer pleading the case on behalf of petitioner – Shagandeep Singh and, thus, the petition be considered only for petitioners – Jagjit Singh and Gurwinder Singh.

8. It is argued by learned counsel for the petitioners that the petitioners

CRM-M-42091 of 2020 (O&M)

had been wrongly declared proclaimed offenders without following due process of law and despite the fact that they had been declared innocent. Learned counsel pointed out that though as per the statement of ASI Avtar Singh (Annexure P.13) and his reports Annexures P.14 to P.16, the proclamation was effected in the village on 01.11.2019 but on that day, effecting of the proclamation was not possible as due to the corona period, nobody was allowed to visit the village and no police official came to the village as is reflected from the affidavits of Member Panchayat Gurdev Singh, Kashmir Singh and Smt. Surjit Kaur, copy of which are Annexures P.4 to P.6.

9. Refuting the said contentions, it is argued by learned State Counsel along with counsel for the complainant that petitioners approached this Court by concealing the material fact to the effect that they were declared proclaimed offenders on 16.12.2019 and it is only thereafter that they were declared innocent. However, on the representation made by the complainant, all the petitioners along with other accused have been sought to be prosecuted. It is further pointed out that affidavits dated 02.11.2021 of Members, Panchayats have been procured by the petitioners, are apparently false because there was no corona during the period when police visited the village of petitioners on 13.09.2019. Learned counsel also referred to *M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others, AIR (Supreme Court) 1918* and *State of Telangana Vs. Habib Abdullah Jeelani and others, 2017(1) R.C.R. (Criminal) 537*, in order to contend that without resorting to the provisions for seeking anticipatory bail, the petition has been filed and interim relief has been obtained, which practice has been deprecated by Hon'ble Supreme Court.

10. Having considered submission of both the sides, I find no merit in

this petition.

11. Petitioners have challenged the order dated 16.12.2019, whereby they have been declared proclaimed offenders, to be against law and for the reason that they were declared proclaimed offenders despite being innocent.

12. Learned counsel for the respondents are right in contending that petitioners have tried to mislead this Court by concealing the material facts. Impugned order Annexure P.3 dated 16.12.2019 declaring the petitioners as Proclaimed Offenders had been passed much prior to the finding of the first investigation that petitioners were innocent. That finding was given by SP (Investigation) on 27.05.2020 and his opinion was confirmed by the District Attorney (Legal). So, contention of the petitioners is wrong that despite being declared innocent, they were declared proclaimed offenders by the Court. Here itself, it may be noted that on the representation of the complainant of the case, matter was re-investigated and the petitioners along with other accused were found to be culprits and sought to be prosecuted.

13. Proceeding further, it is on 20.08.2019 that application was moved by the Investigating Agency to initiate proclaimed offender proceedings against six accused including the petitioners. Nonailable warrants were issued on 13.09.2019, which was entrusted to ASI Charanjit Singh. He conducted raids at the house of petitioners and other co-accused but the petitioners were found to be absconding, which is evident even from the statement of Gurdev Singh, Member Panchayat (Annexure R.1/T) and that of Sohan Singh Watchman (Annexure R.2/T). It is in these circumstances that proclamation was issued by the Court against six accused including petitioners on 13.09.2019 for their appearance before the Court on 16.12.2019. Copy of the said proclamations are Annexures

CRM-M-42091 of 2020 (O&M)

P.10 to P.12 clearly indicating that the petitioners were required to appear before the Court within 30 days from the date of issuance of the proclamation. Next date of hearing was fixed to be 16.12.2019. The proclamation was duly effected on 01.11.2019, as evident from the reports Annexures P.14 to P.16 of ASI Avtar Singh and the statement dated 16.12.2019 made by him before the Court Annexure P.13. Annexure R3/T, Annexures R4/T and Annexure R5/T are statements of Sohan Singh Watchman revealing that proclamation notice issued by the Court against three petitioners was duly pasted on the pillar of the gate of the house of the petitioners, in his presence. Another copy was pasted on the thoroughfare street of the Village and the announcement was made in village.

14. Annexures P.4 to P.6, the copies of affidavit of Gurdev Singh, Kashmir Singh & Smt. Surjit Kaur, Members Panchayat, are apparently procured by the petitioners, containing false facts. As per these affidavits, nobody had come to the village on 13.09.2019 to enquire about the petitioners due to corona pandemic. It is rightly pointed out by learned counsel for the respondents that in September, 2019, there was no corona, as the said pandemic started in March, 2020. Besides, petitioners did not place on record affidavit of the Panchayat Members or the watchman of the village to deny the effecting of the proclamation on 01.11.2019. It is only after effecting of the proclamation on 01.11.2019 when the petitioners failed to surrender before the Court on or before 16.12.2019 that they were declared proclaimed offenders vide impugned order dated 16.12.2019. Thus, all pre-requirements as per Section 82 Cr.P.C were duly complied with and, therefore, the impugned order cannot be held in any manner to be illegal.

15. Apart from above, copy of the order dated 28.08.2019 passed by a co-ordinate Bench of this High Court in CRM-M-35106 of 2019 would reveal that

CRM-M-42091 of 2020 (O&M)

petitioner No.2 – Gurwinder had earlier moved application under Section 438 Cr.P.C seeking anticipatory bail but the same was dismissed by the Court. However, by filing this petition in December, 2019, petitioner concealed the said material fact.

16. The practice of seeking interim protection in petition under Section 482 Cr.P.C., without resorting to the provisions of Section 438 Cr.P.C has been highly deprecated by Hon'ble Supreme Court in *Habib Abdullah Jeelani and M/s Neeharika Infrastructure Pvt. Ltd. Case (supra)*.

17. On account of the entire discussion as above, finding no merit in the petition, the same is hereby dismissed.

February 09, 2023
renu

(DEEPAK GUPTA)
JUDGE

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