

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**233****CRM-M No.48732 of 2021****Reserved on : 04.08.2023****Date of Decision : 10.08.2023**

Mandeep Singh Sandhu

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.S. Ghuman, Advocate for the petitioner.

Mr. M.S. Tiwana, AAG Punjab.

ALKA SARIN, J.

1. The present petition under Section 482 Code of Criminal Procedure, 1973 (for short 'CrPC') has been filed for quashing the order dated 21.09.2019 (Annexure P-5) passed by the Judicial Magistrate Ist Class, Payal, District Ludhiana in FIR No.12 dated 06.02.2016 under Sections 498-A, 406 and 506 of the Indian Penal Code, 1860 (for short 'IPC') registered at Police Station Payal, Police District, Khanna. Vide the impugned order (Annexure P-5), the petitioner has been declared as a proclaimed person.

2. The brief facts relevant to the present case are that the petitioner herein was married to the complainant – Prabhjot Kaur – on 17.10.2012. It is the case set up by the petitioner that the petitioner and the complainant lived together for a very short period and after about one month of marriage the petitioner left for France as he is a permanent resident of France. The complainant filed FIR No.12 dated 06.02.2016 after more than 3½ years of marriage under Sections 406, 498-A and 506 IPC at Police Station Payal, Police District Khanna levelling allegations against the petitioner and others.

The FIR also has shown the petitioner herein to be a resident of France. Vide the impugned order dated 21.09.2019, the petitioner was declared a proclaimed person.

3. Learned counsel for the petitioner would submit that the petitioner is a permanent resident of France as is also apparent from a perusal of the FIR and that there was no proper service of summons effected on the petitioner and that the proclamation proceedings are also not in accordance with law as the proclamation was sent to the wrong address. It is further the contention that there was no effort made to serve the petitioner at his address in France nor any publication was made in the newspapers in France.

4. *Per contra* learned State counsel has referred to a short reply filed by way of affidavit of Mr. Devinder Kumar, PPS, Deputy Superintendent of Police, Sub Division Payal, Police District Khanna, District Ludhiana to contend that the proclamation was made in a proper manner and after following the due procedure of law.

5. I have heard learned counsel for the parties.

6. Section 82 CrPC 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) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under Sub-Section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392,

393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860) and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of Sub-Sections (2) and (3) shall apply to a declaration made by the Court under Sub-Section (4) as they apply to the proclamation published under Sub-Section (1).”

7. In the present case the address of the petitioner as even given in the FIR is of France. The proclamation requiring appearance of the petitioner was made at the local address i.e. village Shahpur, Tehsil Payal, District Ludhiana. A perusal of the order (Annexure P-2) and the report (Annexure P-3) would reveal that no attempts were made to serve the petitioner in France especially in the absence of any material on the record that the petitioner had left the country after the registration of the FIR in question with a view to abscond or conceal himself. Thus, this Court has no hesitation in holding that the petitioner was declared a proclaimed person in violation of Section 82 CrPC. Accordingly, the impugned order dated 21.09.2019 (Annexure P-5), to the extent that it declares the petitioner a proclaimed person, is set aside. The Judicial Magistrate Ist Class, Payal is directed to pass a fresh order with regard to the proceedings against the petitioner under Section 82 CrPC in accordance with law

8. The petition stands disposed off accordingly. Pending applications, if any, also stand disposed off.

10.08.2023

jk

**(ALKA SARIN)
JUDGE**

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES.NO