

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

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CRM-M-48321-2023

Date of decision: 25.09.2023

Arshdeep Kaur Dandiwal

...Petitioner

Versus

Balbir Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sudhir Rana, Advocate for the petitioner.

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 17.02.2023, Annexure P-4, passed by the learned Judicial Magistrate Ist Class, Abohar, District Fazilka, whereby the petitioner has been declared as proclaimed person in complaint case No.NACT/1382 of 2021, dated 18.08.2021 under Section 138 of Negotiable Instruments Act, 1881.

2. Learned counsel contends that the petitioner had left the country on 26.12.2018, a fact that stands substantiated from the copy of passport, Annexure P-5, whereafter, on 18.08.2021, a complaint, Annexure P-1, under Section 138 of Negotiable Instruments Act, 1881 was instituted, wherein summoning order was passed on the same day. As a matter of fact, the petitioner got married to Harvinder Singh on 04.04.2018 and due to matrimonial discord, divorce was granted by the competent Court of law in

Australia vide judgment dated 25.07.2022. Both of them continued to reside in the said country. However, only to make it difficult for the petitioner in obtaining PR in Australia, Harvinder Singh, with whom she had a joint account, issued two cheques in favour of one Jagpal Singh, purportedly bearing signatures of the petitioner, which are specifically denied by her. The petitioner has been declared proclaimed person vide order dated 17.02.2023, without complying with the provisions of Sections 82 and 105 Cr.P.C. Her absence was neither wilful nor deliberate and on account of the reason aforesaid. The marriage of the brother of the petitioner is stated to be fixed on 30.11.2023, in India, for which she wants to come and is willing to surrender and join the proceedings and prays for grant of one opportunity, even if it is subject to costs. To fortify his submissions, learned counsel for the petitioner places reliance on the judgments of this Court in CRM-M-49283-2021 titled **Gurbir Singh Mundi vs. State of Punjab and another**, decided on 16.12.2021, CRM-M-25115- 2022, titled as **Jasbir Kaur Vs. State of Punjab and another**, decided on 02.06.2022 and CRM-M-32011-2018 titled as **Jaswant Singh vs. State of Punjab and another**, decided on 06.02.2020, order dated 24.09.2021 passed in SLP (Crl.) No.7072 of 2021 filed by the above petitioner-Jaswant Singh, judgment dated 20.10.2021 in Criminal Appeal no. 1233 of 2021 (SLP (Crl.) No.7072 of 2021), which was allowed.

3. Notice of motion.

4. Ms. Himani Arora, AAG, Punjab, who has appeared on receipt of advance copy of the petition, 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. In view of the nature of the order which this Court proposes to pass, there is no necessity of calling upon any response from respondent No.1, as no order prejudicial to his rights is being passed.

6. Heard the learned counsel and perused the file.

7. It is apposite to make a reference to the judgment of this Court in the case of **Jasbir Kaur** (supra), since the petitioner therein was a Non Indian Resident residing in Canada and proclamation proceedings had been initiated while she was not in India, as such, the order of proclamation was set aside.

8. Similarly, in the case of **Jaswant Singh** (supra), this Court in the interim order dated 10.9.2018, noticed the submission made by the counsel for the petitioner relying on the photocopy of the passport (Annexure A-1) that the petitioner was not in India at the time of registration of FIR on 29.10.2009, as well as, on the day, when he was declared proclaimed offender vide order dated 28.4.2014 and even on the date of passing of the above order, as he was in Italy, directed him to surrender before the trial Court, upon which interim bail was ordered to be granted to him. This Court vide order dated 6.2.2020 though declined the prayer for quashing of FIR made in the petition, but, with regard to the order declaring him a proclaimed offender, directed him to surrender before the trial Court and file an application for regular bail, however, till then he was ordered to be not arrested. He however challenged the said order inasmuch as this Court had declined his prayer for quashing of the FIR, wherein Hon'ble The Supreme Court of India vide an interim order dated 24.09.2021 passed in SLP (Crl.) No.7072 of 2021, ordered not to take

coercive steps against him. Subsequently, vide judgment dated 20.10.2021, the Criminal Appeal no. 1233 of 2021(SLP(Crl.) No.7072 of 2021) was allowed and FIR was quashed, in para 8 whereof it was mentioned that, he had surrendered on 27.10.2018, whereafter he was admitted to interim bail.

9. 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.

10. Adverting to the facts of the present case, the reasons for non-appearance of the petitioner were justified particularly in view of the fact that he was declared proclaimed offender without compliance of mandatory provisions of Section 82 and 105 Cr.P.C. 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.

11. Keeping in view the facts and circumstances of the case, judgments referred to hereinabove, the readiness and willingness of the petitioner to surrender and join the proceedings, which is incumbent upon her for the culmination of the same, the present petition deserves to be and is allowed, in the interest of justice, so as to facilitate expediting the trial and taking it to the logical end. Accordingly, the impugned order dated 17.02.2023, Annexure P-4 is set aside subject to surrender by the petitioner before the trial Court on or before 30.11.2023 and depositing Rs.25,000/-, as costs with Punjab and Haryana High Court Bar Association Lawyer's Family Welfare Fund. On furnishing bail/surety bonds, the trial Court shall release her on bail subject to its satisfaction. She is also directed to furnish an

undertaking by way of an affidavit that she will appear on each and every date of hearing before the trial Court, unless specifically exempted by the Court. The trial Court may impose any other condition that it may deem appropriate in the facts and circumstances of the present case. Till then, no coercive steps be taken against the petitioner.

12. 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.

(AMAN CHAUDHARY)
JUDGE

25.09.2023

Ankur

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No