

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

CRM-M-54289-2021

Date of decision:-11.04.2023

Jagbir Singh

....Petitioner..

vs.

State of Punjab and another

....Respondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Lakhwinder Singh Mann, Advocate for the petitioner.

Mr. Vinay Kumar Gupta, AAG, Punjab,
for respondent No.1-State.

Mr. L.S. Lakhanpal, Advocate,
for respondent No.2.

HARKESH MANUJA J. (Oral)

By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of order dated 23.12.2020 passed by the court of learned Sub-Divisional Judicial Magistrate, Nakodar, whereby the petitioner has been declared as proclaimed person in a proceeding arising out of FIR No.164, dated 20.10.2019, under Sections 452, 323, 325, 341, 506, 294, 109, 427, 148, 149 IPC, Police Station Nakodar Sadar, District Jalandhar Rural.

The facts of the case are that the petitioner besides few others was arrayed as an accused in aforesaid FIR on the allegation that they caused injuries to the complainant.

Learned counsel for the petitioner submits that the petitioner was not having any knowledge regarding the proceedings pending against him as

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he went abroad (Bahrain) on 01.11.2019 in relation to earning of his livelihood and came back on 07.12.2021 and as such was never served with any summons either by the investigating officer or by the court concerned before proceeding against him under Section 82 Cr.P.C. He also submits that even the proclamation made in pursuance to an order dated 03.11.2020 for causing appearance on 23.12.2020 was carried out at the address which the petitioner had already left, having gone abroad and thus, the proclamation was in violation of the mandatory provisions laid down under Chapter VI of the Cr.P.C. in particular Section 105 thereof.

Learned counsel also submits that the other co-accused, who were facing trial in pursuance to the challan filed by the investigating agency already stand acquitted by the trial court vide judgment dated 16.08.2021 (Annexure P-6 at page 17) and the same has become final as having not been challenged at the instance of complainant or even the prosecution agency. He further submits that before declaring the petitioner as proclaimed person no effort was ever made to serve him through the process as founded under Section 105 Cr.P.C. In addition, learned counsel also pointed out that the petitioner has even entered into a settlement with complainant-respondent No.2 and based thereupon, a petition seeking quashing of FIR in question has already been filed before this Court vide CRM-M-53123-2021, which is pending for 11.05.2023.

On the other hand, learned State counsel has not been able to dispute the fact that the co-accused of the petitioner, in the same FIR already stand acquitted by the trial court vide judgment dated 16.08.2021 and there is no challenge to the same.

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Similarly, learned counsel for respondent No.2 has also admitted the factum of settlement having been arrived at between the parties followed by filing of petition under Section 482 Cr.P.C. for seeking quashing of FIR in question.

I have heard learned counsel for the parties and find substance in the submissions made on behalf of the petitioner.

Perusal of passport of the petitioner, which has been appended with the petition as Annexure P-2 shows that the petitioner departed from India on 01.11.2019 whereas came back on 07.12.2021 and, as such, order dated 03.11.2020 passed by the trial court for issuance of proclamation against the petitioner by recording satisfaction that the petitioner was either absconding or was concealing his presence for avoiding his arrest, particularly, in view of the reports given by the process serving agency to the effect that the petitioner had already left his residence and gone somewhere else, was totally uncalled for and against the record as well as in violation of the spirit of Section 82 read with Section 105 Cr.P.C. Once a report was submitted before the trial court to the effect that the petitioner had already left his residence and had gone somewhere else, the primarily effort of the trial court should have been to first locate the correct address of the petitioner so as to make an effort to serve him there before acting with an amazing swiftness of ordering an issuance of proclamation under Section 82 Cr.P.C. The purpose of Section 82 Cr.P.C. is to procure the presence of an individual, who has been been arrayed as an accused in a criminal proceedings, however, in the facts and circumstances of the present case, once a report came that the petitioner had already left his residence, there

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was no practical purpose of issuance of proclamation at the same very address, without making sincere efforts to get the correct address. Section 82 Cr.P.C. since regulates the liberty of an individual, thus has to be strictly construed and no individual can be proceeded against under the same in a casual manner. In the facts and circumstances of the present case, the undue haste shown by the trial court while initiating the proceedings under Section 82 Cr.P.C. at the address which the petitioner had already left was wholly uncalled for.

More than that the petitioner has already appeared before the trial court and furnished his bail bonds/surety bonds in pursuance to an order dated 23.12.2021 passed by this Court, besides it, other co-accused already stand acquitted vide judgment dated 16.08.2021 passed by the court of SDJM, Nakodar, besides it, the petitioner has already entered into a settlement with respondent No.2 and based thereupon, quashing of FIR in question is also pending before this Court.

In view of the above, the present petition is allowed and order dated 23.12.2020, passed by the court of learned SDJM, Nakodar, declaring the petitioner as proclaimed offender, is hereby quashed.

Pending applications, if any, stand disposed of.

11.04.2023

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/ No