

CRM-M-45031-2019

1

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

230

CRM-M-45031-2019
Date of decision: 05.01.2023

Raju Kaushik @ Raju Sharma

....Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sumeet Goel, Senior Advocate with
Mr. Paramvir Singh Parmar, Advocate
for the petitioner.

Ms. Aditi Girdhar, AAG, Haryana.

AMAN CHAUDHARY. J.

The present petition under Section 482 of the Cr.P.C. has been filed for quashing the order dated 01.12.2017 (Annexure P-1) and order dated 15.07.2019 (Annexure P-2) passed by learned Sub Divisional Judicial Magistrate, Guhla in case FIR No. 15 dated 03.02.2017 registered against 11 persons including the petitioner under Sections 302, 341, 148, 149 IPC and Section 3 of SC/ST Act, 1989 at Police Station Guhla and all proceedings arising therefrom.

Final report under Section 173 Cr.P.C. was presented on 24.04.2017. An application for issuance of arrest warrants of the petitioner was filed, whereupon the trial Court vide order dated 01.06.2017 issued the same for 01.09.2017, whereas in the supplementary challan presented on 21.08.2017, the petitioner was not shown as an accused. However, since in pursuance to the order dated 01.06.2017, the petitioner was not arrested, the

trial Court vide order dated 01.09.2017, issued non-bailable warrants issued to the accused, which were received back unexecuted. Accordingly, fresh application for issuance of proclamation of accused was filed by the prosecution. Consequently, vide order dated 01.12.2017 (Annexure P-1), petitioner was declared as proclaimed person, on basis of the statement of the executing official that on 10.09.2017, a copy of proclamation was affixed on the house of the accused and he had stated that on reaching his house, he was informed that the petitioner was out of his house since last many months and he seldom visits his house. He further submits that the police after the enquiry was conducted by the DSP found the petitioner innocent and filed an application on 02.07.2019 before the trial Court for cancellation of warrants. However, the said application was dismissed by the trial Court vide order dated 15.07.2019 on the ground that since the offence committed by the petitioner for his absence from the Court which is different from the offences mentioned in the FIR. He further contends that no proclamation was read in the conspicuous place of town or village. The petitioner was neither served in accordance with law nor did he have knowledge of the proceedings against him, as such, the impugned orders declaring him proclaimed person under Section 82 Cr.P.C. therefore impugned order declaring the petitioner proclaimed person and the order dismissing the application filed by DSP on 02.07.2019, which was wrongly dismissed by the Court, deserve to be set aside.

To buttress his submission, he places reliance on the judgments of this Court in **Gurbir Singh Mundi vs. State of Punjab and another** CRM-M-49283-2021, decided on 16.12.2021, **Hardev Kaur vs. State of**

Punjab 2018(2) Law Herald 1256 and **Jasbir Kaur vs. State of Punjab and another**, CRM-M-25115-2022, decided on 2.6.2022.

Heard.

In the case of **Gurbir Singh Mundi** (supra), it was held that provisions of Section 82(2) Cr.PC. are to be mandatorily complied with cumulatively and not alternatively. The Court had quashed the order declaring the petitioner therein as proclaimed person on the ground that declaration was not read publicly in some conspicuous place of town or village, in which the accused ordinarily resides.

In re: **Hardev Kaur's** case (supra) , the order of proclamation was set aside in a case, where the compromise between the parties had been arrived at and no objection had been given by the complainant for setting aside the same.

In the case of **Jasbir Kaur** (supra), since the petitioner therein was a Non Indian Resident lady residing in Canada and proclamation proceedings had been initiated while she was not in India, as such, the order of proclamation was set aside.

The very purpose of issuance of non-bailable warrants, is to compel and secure the presence of the accused to face trial and establish the rule of law so as to ensure finalization of the proceedings.

Adverting to the facts of the present case, the police found the petitioner as innocent and no challan against him was presented in the Court as also the police filed an application to cancel the warrant as well as the order declaring him proclaimed person, which though came to be dismissed. Furthermore, inasmuch the petitioner was never served, thus could not appear before the trial Court, leading to the passing of the impugned order,

which appears to be justified explanation of absence. 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.

In view of the facts and circumstances of this case and the judgments referred to above, the impugned orders dated 01.12.2017 and 15.07.2019, Annexure P-2, are set aside.

(AMAN CHAUDHARY)
JUDGE

January 05, 2023

Mehak/gsv

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No