

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-61980-2023

Date of Decision: December 08, 2023

SANTOSH SINGHPetitioner
Versus
STATE OF PUNJAB AND ANOTHERRespondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. A.S. Khosa, Advocate for the petitioner.

Mr. Shubham Kaushik, A.A.G., Punjab

HARKESH MANUJA, J. (ORAL)

By way of present petition filed under Section 482 CrPC, prayer has been made for seeking quashing of order dated 20.01.2022 passed by learned Chief Judicial Magistrate, Hoshiarpur whereby, the petitioner was declared as proclaimed person in terms of Section 82(1) of CrPC in complaint case No. COMI-139-2017 dated 28.09.2017.

2. In the present case, on account of complaint having been filed at the instance of respondent No.2, the petitioner was summoned by the Judicial Magistrate First Class vide order dated 21.10.2019 to face trial for the offence punishable under Sections 420, 464, 465, 468, 471 and 34 IPC. The summons were issued for 16.12.2019. Somehow, the notice could not be issued by Ahlmad for three consecutive dates i.e. 21.10.2019, 16.12.2019, 18.01.2020 and 15.02.2020 followed by the complaint being adjourned for 31.03.2020 for issuance of fresh notice to the petitioner.

3. In the meanwhile, on 08.03.2020, the petitioner left the country for Dubai and came back on 27.11.2023, however, he being abroad, proceedings under Section 82 of CrPC stood initiated against him, resulting in his declaration as proclaimed person vide order dated 20.01.2022.

4. Impugning the aforesaid order dated 20.01.2022, learned counsel for the petitioner submits that the petitioner having gone abroad on 08.03.2020, the process initiated against him in terms of Section 82 of CrPC was wholly vitiated as no effort was ever made to serve him through Consulate General of U.A.E. He further submits that the petitioner never had any intention to evade the process of law.

5. On the other hand, prayer made herein has been vehemently opposed by learned State counsel while submitting that the wife of petitioner was also one of the accused in the complaint who had been appearing before the trial Court and thus, the petitioner was having complete knowledge about pendency of complaint as well as summoning order passed against him. He accordingly points out that the non-appearance of the petitioner before the trial Court was intentional.

6. I have heard learned counsel for the parties and gone through the paper-book. I find substance in the submissions made by learned counsel for the petitioner.

7. In the present case, though the summons were issued by the trial Court on 21.10.2019, however, till 08.03.2020 i.e. the date

when the petitioner left India for Dubai, service of summoning order dated 21.10.2019 was ever effected upon him and thus, the proceedings under Section 82 CrPC initiated at his back were wholly vitiated especially, in the absence of any effort having been made by the Court to serve the petitioner through the concerned Consulate, in terms of Section 105 CrPC. In the humble opinion of this Court, no merit can be found in the plea raised at the instance of learned State counsel as the order declaring an individual a proclaimed person/proclaimed offender regulates his/her freedom and thus, emanates from Article 21 of the Constitution of India; thus, being inviolable, the process has to be mandatorily followed. My aforesaid view is even derived from decision dated 31.12.2022 rendered by this Court in CRM-M-49863-2022 titled as ***“Parminder Kaur Motay Vs. State of Punjab”***.

8. Accordingly, in view of the discussion made hereinabove, finding merits in the present petition, the order dated 20.01.2022 passed by the trial Court whereby, petitioner was declared as proclaimed offender being in violation of the statutory provisions is thus, set aside.

9. The present petition is being disposed of without issuance of notice to respondent No.2 i.e. the complainant, in view of the fact that the declaration of an individual as proclaimed person/proclaimed offender is an exercise between the individual and the Court with there being no prejudice to the rights of the complainant.

10. In addition, the petitioner undertakes to approach the trial Court within period of 10 days from today so as to avail his remedies as

regards grant of anticipatory bail/surrender, till then no coercive steps be taken against the petitioners.

11. The aforesaid order shall however, be subject to deposit of cost of Rs.10,000/- with Diagnostic Centre, Punjab and Haryana High Court Bar Association, Chandigarh, A/c No.41564846387, State Bank of India, High Court Branch, IFSC No.-SBIN0050306.

08.12.2023
Tejwinder

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>