

Neutral Citation No.2024:PHHC:021704

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5491 of 2019 (O&M)

Reserved on:13.02.2024

Pronounced on: 15.02.2024

Sodagar Singh

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. R.K. Shukla, Advocate for the petitioner.

Mr. R.K. Takkar, DAG, Punjab.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C, petitioner prays for quashing FIR No.130 dated 11.12.1996 registered at Police Station Nawanshahr under Sections 419/120-B IPC; besides order dated 10.12.2003 (Annexure P.5) declaring the petitioner as proclaimed offender.

2.1 On perusal of the paper book, it emerges that Parvinder Kaur, daughter of petitioner – Sodagar Singh had performed marriage with Onkar Singh son of Tarlochan Singh on 17.05.1993. They moved an application (Annexure P1) before the Registrar of Marriages, Nawanshahr on 02.01.1994 for registration of their marriage. After recording statements of Onkar Singh son of Tarlochan Singh, Jasbir son of Tarlochan Singh, and Tara Singh, Nambardar (Annexure P2), the marriage certificate (Annexure P.3) was issued on 02.02.1994 itself by the Registrar of Marriage, Nawanshahr.

2.2 Later on, Nasib Singh – respondent No.2 (since deceased) made

a complaint to Senior Superintendent of Police, Nawanshahr alleging that Tara Singh Nambardar used to indulging in attesting documents by wrong means. It had been alleged that Onkar Singh is the son of Basanta Ram and not of Tarlochan Singh and that Tarlochan is the elder brother of Onkar Singh.

2.3 After conducting the necessary investigation, challan was presented against petitioner – Sodagar Singh, the father of Parvinder Kaur; besides Tara Singh Nambardar, Jasbir Singh (brother of Onkar Singh), Onkar Singh and Sucha Singh. During proceedings, Parvinder Kaur, Onkar Singh and petitioner – Sodagar were declared proclaimed offenders.

2.4 After holding trial, the remaining accused i.e. Tara Singh, Jasbir Singh and Sucha Singh were acquitted vide judgment dated 17.01.2008 (Annexure P.7) by learned Chief Judicial Magistrate, Nawanshahr.

3.1 Learned counsel for the petitioner contends that the petitioner has been falsely implicated at the instance of respondent No.2, though he has not committed any offence. At the time of registration of the FIR, he (petitioner) was living in Shastri Nagar, Kanpur (UP). He was allowed bail on 19.01.1999. On contacting the complainant, he was told that complaint was only against Tara Singh Nambardar. His counsel also told him that there was no allegation against him and so due to this misrepresentation, he left India and ever since then, he is residing in Canada.

3.2 Learned counsel contends further that now when the petitioner wants to visit India, he came to know that he has been declared proclaimed offender. It is urged that though the petitioner was residing in Shastri Nagar, Kanpur at the time of presentation of the challan, which address is also mentioned in the challan, but no proclamation was effected thereat and so, proceedings under Section 82 Cr.P.C., were wrongly initiated so as to

declare him as Proclaimed Offender.

3.3 Learned counsel also contends that co-accused Tara Singh Nambardar, against whom only the allegations were made in the FIR; besides Jasbir Singh and Sucha Singh, have already been acquitted vide Annexure P7. Besides, two more similarly placed co-accused Parvinder Kaur and Onkar Singh, who were also declared proclaimed offender, had approached this Court by filing CRM-M-31519 of 2008 (O&M) and that vide order dated 15.02.2011 (Annexure P8), this Court has already quashed the FIR qua them.

3.4 With these submissions, prayer is made by the petitioner to quash the FIR qua him and also to set aside the order declaring him as Proclaimed Offender.

4. Learned State Counsel opposed the petition by submitting that after availing the benefit of bail, petitioner intentionally absented himself without seeking permission from the Court. He kept evading the process of law for long and so, he cannot be allowed the benefit of acquittal of the co-accused. Prayer is made for dismissal of the petition.

5. I have considered the submissions of both the sides and have perused the record carefully.

6. The contention of the petitioner to the effect that at the time of presentation of the challan, he was residing in Shastri Nagar, Kanpur, has not been refuted by the respondent- State in its reply. Learned counsel for the petitioner has also drawn attention towards Annexure P4, the copy of passport along with visa endorsement, revealing that address of the petitioner therein is Shastri Nagar, Kanpur and that he had left India way back in 2001. Annexure P5 is the copy of the order dated 10.12.2003 passed by learned Chief Judicial Magistrate, revealing that as per statement made

by Serving Constable Somnath, the accused Sodagar i.e. Petitioner had left India and since 30 days' period had elapsed, so he was declared Proclaimed Offender.

7. It is, thus, clear that despite receiving the clear report that at the time of issuing proclamation, petitioner was living abroad and the address in his passport is that of Shastri Nagar, Kanpur, no effort was made to serve the petitioner on any of those addresses. In these circumstances, the order dated 10.12.2003 (Annexure P.5) declaring the petitioner as proclaimed offender, cannot be sustained in the eyes of law. As such, the said order is set aside.

8. It is revealed further that similarly placed co-accused Parvinder Kaur and Onkar Singh had filed CRM-M-31519 of 2008 (O&M) before this Court for quashing of the same FIR. While quashing the FIR vide order dated 15.02.2011, this Court made the following observations:-

“In view of the fact that the main accused have been acquitted and the learned Chief Judicial Magistrate has categorically held that the prosecution was unable to prove any conspiracy between the accused and the complainant Nasib Singh had admitted the marriage of Onkar Singh with Parminder Kaur, no offence under Section 419, 120-B IPC was made out. The petitioners have been residing in USA ever since they got married on 17.5.1993. The FIR was registered at their back and they were declared proclaimed offender without prior service as contemplated under Section 82(2) of the Code of Criminal Procedure. There are no direct allegations in the FIR against the petitioners. The FIR had been registered to inquire into the alleged wrong doings of Tara Singh. Once he has been acquitted, no case is made out against the petitioners for facing trial. In my considered opinion, the FIR and all the proceedings emanating therefrom are an abuse of the process of law, therefore, should be quashed.

Consequently, the criminal miscellaneous is allowed. The FIR No. 130 dated 11.12.1996 under Sections 419, 120-B IPC registered at Police Station Nawanshahr against the petitioners, and all proceedings emanating therefrom, including the order declaring the petitioners as proclaimed offender, are quashed.”

The afore-said observations made by this Court in its order
Page No.4 out of 05 pages

dated 15.02.2011 in CRM-M-31519 of 2008 (O&M) (Annexure P8) are fully applicable to the case of the petitioner also.

10. Taking into consideration all the facts and circumstances as noted above, the present petition is accepted. Accordingly, FIR No.130 dated 11.12.1996 registered at Police Station Nawanshahr under Sections 419/120-B IPC, besides order dated 10.12.2003 (Annexure P.5) declaring the petitioner as proclaimed offender and all consequential proceedings arising therefrom are hereby quashed qua the petitioner.

February 15, 2024
renu

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No