

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-7939-2020
DECIDED ON: 12.03.2024

LAMBER SINGH

.....PETITIONER

VERSUS

AMARJIT SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Vaishali Thakur, Advocate for
Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. Bhupinder Gupta, Advocate for
Mr. G.S. Madaan, Advocate for respondent.

SANDEEP MOUDGIL, J

1. The instant petition under section 482 has been filed seeking quashing of Proclamation Order (Annexure P-6) dated 20.01.2010, passed by S.D.J.M, Kapurthala and enabling the petitioner to join proceedings and defend himself in Complaint No. 1279-A dated 19.09.2008 titled as Amarjit Singh vs Lamber Singh under section 138 of Negotiable Instrument Act, 1881.

2. The case of the petitioner is that he is a permanent resident of England and to spend his old age in India, purchased a house bearing no. 13, Ajit Avenue, Kapurthala through respondent who acted on his behalf as attorney. However due to strenuous relations between the petitioner and respondent, the petitioner was compelled to revoke his attorney. Thereafter, to wreak vengeance against the petitioner, respondent in collusion with his wife and sister in law initiated legal proceedings against the petitioner based on forged agreement to sell dated 23.05.2008 wherein a suit for specific

performance along with permanent injunction restraining the petitioner from interfering from the possession of House no 13, Ajit Avenue, Kapurthala was filed alleging that the respondent had paid a sum of Rs. 15 lakhs as earnest money to the petitioner against the total consideration of 25 Lakhs.(Annexure P-1). Further, the respondent forged and fabricated a cheque from an account which was never opened by the petitioner and a complaint under section 138 of Negotiable Instruments Act 1881 was filed by the respondent which declared the petitioner as proclaimed offender vide order dated 20.01.2010.

3. Learned counsel for the petitioner contends that the trial court has arbitrarily declared the petitioner as proclaimed offender without following due process of law enshrined under section 82 of Cr.P.C wherein complaint against petitioner was registered on 19.09.2008 and vide order dated 18.11.2009, proclamation was issued and published in daily Tribune dated 07.12.2009 directing the petitioner to appear on 11.12.2009 which was practically impossible since the petitioner was residing in England.

4. Further, he contends that even otherwise also this order is liable to be set aside, as the absence of the petitioner was neither intentional nor deliberate as prior to the registration of the complaint, he was not residing in India since having settled in UK. The present complaint came to be registered on 19.02.2008 whereas during this time petitioner was already in UK and had no knowledge about the proceedings initiated against him. Also, he had visited India only for a short span from 24.12.2007 to 06.01.2008 and 02.06.2008 to 22.06.2008.

5. Learned State counsel, on the other hand, has submitted that the petitioner despite the proclamation had failed to appear before the trial Court and have been rightly declared proclaimed offender. And in addition the

petitioner is evading the process of court intentionally and deliberately which is highly deprecated on his part and he did not comply with the orders of the court which shows that he has no respect for the court's order and a person who obstructs the process of law and evades from it does not deserve any concession.

6. Heard respective counsels for the parties.

7. From the perusal of the case it is culled out that, the petitioner was living in U.K before the relevant complaint was filed under section 138 of Negotiable Instruments Act 1881. According to Section 82 of the Criminal Procedure Code, a proclamation may be issued against an individual by the Court if it is reasonably believed that the person for whom a warrant has been issued has absconded or is hiding, making it impossible for the warrant to be carried out. A person cannot be said to be "abscond" or "evade" the execution of warrant when he had gone to a distant place before the issue of the warrant. Dependence may be made on the case of ***M.S.R. Gundappa v. State of Karnataka (1977 Cr LJ NOC 187)***, wherein it was held that a person who had gone abroad even before the issue of the warrant of arrest cannot be said to be absconding or concealing himself with the intention to disrupt the execution of that warrant. Additionally, the ruling can be supported by the judgement of our own court in ***CRM-M-1513-2009 tiled as "Meher Singh And Anr. vs State of Punjab"*** wherein it was held as under:

"In the present case, since the petitioners were already residing in Canada before the registration of FIR in question i.e. since the year 1997, there was no occasion for them to conceal themselves or abscond. A perusal of order dated 7-10-2008 (Annexure P-10) and order dated 21-12-2007 (Annexure P- 4) does not reveal that the petitioners

were ever attempted to be served in Canada especially when there was no material on record that the petitioners had left the country after the registration of FIR in question with a view to abscond or conceal themselves. Rather in the inquiries conducted by the police, the petitioners were found to be innocent because the alleged papers in question were prepared in Canada. Thus, the petitioners were declared proclaimed offenders in violation of Section 82, Criminal Procedure Code. Accordingly, the impugned order dated 7-10-2008 (Annexure P-10), whereby the petitioners were declared proclaimed offenders, is set aside.”

8. Coming back to the present case in hand wherein from the perusal of the case file as well from the support of the documents it can be inferred that petitioner was in U.K prior to the registration of the complaint and moreover proper summons should have been issued to him either through Department of Foreign Affairs or British High Commission in India therefore the petitioner had no occasion to abscond or evade the process intentionally as he was never served in accordance with law therefore the petitioner was declared Proclaimed offender in violation of section 82 of CrPC.

9. Therefore in light of the judicial dictums and observations made, the impugned order dated 20.01.2010 (Annexure P-6) vide which the petitioner was declared proclaimed offender is bad in law and is hereby set aside.

10. Petition stands allowed.

12.03.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No