

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-15860-2011 (O&M)
Reserved on: 10.01.2024
Pronounced on: 16.01.2024

Gurteshwar Singh
... Petitioner(s)
Versus
State of Punjab & others
...Respondent (s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
Present:- Mr. A.P. Kaushal, Advocate
for the petitioner(s).
Mr. Shiva Khurmi, AAG, Punjab.
Mr. Kuldeep Singh Saini, Advocate
for respondents no.2 to 9.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
8	19.2.1998	Sadar Moga, District Moga	307, 324, 323, 148, 149 IPC.

1. Seeking quashing of proclamation order dated 2.9.2002 passed by Additional Sessions Judge (Ad hoc), Faridkot in FIR captioned above, the petitioner-accused had come up before this Court by filing the present petition under Section 482 CrPC on 20.5.2011.
2. The matter kept on being adjourned on one pretext or the other.
3. Counsel for the petitioner submits that the other accused were convicted in the matter, but after their conviction, they entered into an out of Court settlement with the complainant-victim. He has annexed compromise deed to the said effect. His next contention is that there was total non-compliance of provisions of Section 82 CrPC, because the notice was not put at the place of petitioner’s residence, as he was not in India on that day, as is apparent from the statement of Balwant Singh. He submits that

since the matter has been compromised with other accused and there is total non-compliance of Section 82 CrPC, as such, it is a case where proclamation order must be set aside. He further submits that although the proclamation order is of 2002, but because the petitioner was not in India but in Manila, as such he had filed the present petition on 2.5.2011 and the same is pending since then, but he cannot be faulted for the same. He further submits that in case this order of proclamation is set aside, the petitioner undertakes to appear before the trial Court, because now, he is aware of the proceedings. He further submits that in such a situation, when the petitioner comes to India, he should not unnecessarily be detained and the matter should be heard on top priority, because he is now visiting India for this purpose mainly.

4. State's counsel has strenuously opposed the present petition on the ground that much efforts were made to trace the petitioner, but despite that he could not be nabbed. Secondly, the compromise effected between the parties cannot be accepted. As such, the present petition has to be dismissed.

5. On the other hand, counsel appearing on behalf of respondents no.2 to 9 states, on instructions, that the matter has been compromised even with the petitioner and they would have no objection at all if this Court sets aside the proclamation order and even close the proceedings against him.

6. I have heard counsel for the parties and gone through the pleadings.

7. An analysis of the facts and circumstances of the case would lead to the outcome that the impugned order dated 2.9.2002 passed by Additional Sessions Judge (Adhoc), Faridkot explicitly mentions in paragraph 3 that Balwant Singh was petitioner's surety and on 24.7.2002, he had expressed inability to cause petitioner's appearance for the reason that the accused (petitioner) had gone abroad. After that, he deposited the amount of surety bond in the Court on forfeiture of bond. Despite this explicit statement of the surety made on 24.7.2002 to the effect that the petitioner was not residing at his native place and was out of India, still proclamation was issued at the petitioner's address in India and on 2.9.2002, after expiry of 30 days and, he was declared as proclaimed offender. The Legislature has expressly clarified Section 82 CrPC that before an accused is declared as proclaimed offender, the proclamation shall be published under Section 82(2) CrPC at a conspicuous place of town or village in which such person ordinarily resides. The concerned Court was aware that the petitioner-accused was not residing at the place of his residence in India at that time, as mentioned in police document, and was abroad. Even two of the accused are residing in Manila. The power of attorney annexed with this petition is also attested in Manila,

in which although he has mentioned that he is citizen of India but residing in Manila. The said power of attorney was attested by the Embassy of India on 5.5.2011. Thus, it is clear that provisions of Section 82 CrPC were not complied with and as such, the said order is not legally sustainable.

8. Considering the entire facts, compromise and the undertaking given on behalf of the petitioner, I believe that continuing these proceedings will not suffice any fruitful purpose whatsoever. In the facts and circumstances peculiar to this case, the Court invokes the inherent jurisdiction under section 482 CrPC and quashes the order dated 2.9.2002 passed by Additional Sessions Judge (Ad hoc), Faridkot, non-bailable warrants, PO order and the LOC issued against the petitioner in the FIR captioned above. It is further ordered that the petitioner be not unnecessarily detained or harassed in the matter and the trial Court shall hear and decide the same on top priority. This order shall be subject to appearance of the petitioner before the trial Court to face trial within three months.

Petition allowed in the terms mentioned above. All pending application(s), if any, stand closed.

(ANOOP CHITKARA)
JUDGE

January 16, 2024
AK

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes