

268-2

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-12233-2023 (O&M)
DECIDED ON: 07.02.2024

JORAS SONI

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sachmeet Singh Randhawa, Advocate
for the petitioner.

Mr. Mohit Thakur, AAG, Punjab

Mr. Ritesh Pandey, Advocate
for respondent No.2 and 3.

SANDEEP MOUDGIL, J

1. The instant petition under section 482 has been filed seeking quashing of Proclamation Order (Annexure P-1) dated 11.07.2022, passed by judicial magistrate 1st class, Gurdaspur in case FIR No. 111,dated 5.10.2020, under sections 420 and 506 of IPC and section 13 of Punjab Travel Professionals (Regulation) Act, 2014, registered at police Station Behrampur, district Gurdaspur (Annexure P-2).

2. Learned counsel for the petitioner contends that present FIR came to be registered against the petitioner on account of failing to return the consideration paid by respondent to send her granddaughter abroad. He further states that though now compromise has been effected between the

parties vide compromise deed dated 23.09.2022 (Annexure P-3) and they don't wish to pursue this present FIR further.

3. Mr. Sachmeet Singh Randhwa, learned counsel appearing for the petitioner further asserts that on merits 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 FIR the petitioner was not residing in India and he was in Canada. The present FIR came to be registered on 5.10.2020 whereas during this time petitioner was already in Canada and had no knowledge that an FIR has been registered against him. He also places reliance upon certain documents to substantiate his claim annexed as Annexure P-5 which depicts that petitioner left India on 20.11.2019 and has not visited India since then.

4. Learned State counsel, on the other hand, has submitted that the petitioners despite the proclamation had failed to appear before the trial Court and have been rightly declared proclaimed offenders vide the impugned order. And in addition the petitioner is evading the process of court for the last more than one year 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 courts order and a person who obstructs the process of law and evades from it does not deserves any concession.

5. Heard respective counsels for the parties

6. According to the petition's allegations, the petitioner was living in Canada well before the relevant FIR was filed. 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.

7. 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.

8. Additionally, the ruling can be supported by the judgement of our own court in CRM-M-1513-2009 tiled as “*Mehar 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.*

9. 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 Canada since 2019 prior to the registration of the FIR which later on got registered in the year 2020 petitioner had no occasion to abscond or evade the process intentionally as he was never served in accordance with law. Thus the petitioner was declared Proclaimed offender in violation of section 82 Cr.P.C.
10. Therefore in light of the judicial dictums and observations made the impugned order dated 11.07.2022(Annexure P-1) vide which the petitioner was declared proclaimed offender is bad in law and is hereby set aside.
11. Petition stands disposed off.

07.02.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No