

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-21736-2024
Decided on: 07.05.2024.

Tajinder Singh

.....Petitioner

Vs.

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. J.S. Sibia, Advocate for the petitioner.

Ms. Swati Batra, DAG, Punjab (Through VC).

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
0047/2020	01.02.2020	City Faridkot, Faridkot	420/406 IPC

Seeking quashing of the proclamation order dated 17.10.2022 (Annexure P-7) and the order dated 17.02.2024 (Annexure P-8) passed by the Sessions Judge, Faridkot, the petitioner, who is a holder of an Indian passport but resides in Italy, has come up before this Court by filing the present petition under Section 482 CrPC for quashing the said orders and all consequential proceedings.

2. The petitioner’s claim is that the above-captioned FIR was registered on 01.02.2020, but he had already left for Italy on 16.09.2019 and never returned to India after that. In this regard, he has made a specific statement in para 11 of the petition.

3. The matter was listed yesterday and this Court had passed the following order:-

“Counsel for the petitioner submits that at the time of issuance of notice and proclamation, he was out of India and he had departed for India on 16.09.2019 and currently he is in Italy and never returned India.

State counsel Ms. Swati Batra, submits that if this Court allows this petition then the petitioner despite being aware of the present case, may not come back and it will be very difficult to serve him.

On this, petitioner’s counsel submits that he will send e-mail id and phone number of the petitioner to the e-mail of the concerned SHO and the investigator.

Let the State counsel provide phone number and e-mail id of the investigator and SHO to the petitioner's counsel to enable him to provide the above said details, today by 5pm.

State counsel further submits that petitioner has not annexed the complete copy of passport with the petitioner. On this petitioner's counsel submits that they would provide complete copy of the passport in digital form by e-mail along with above said documents.

Let the petitioner supply all the above said documents by the next date. Let the petitioner also get specific instructions that in case, this Court quashes the proclamation proceedings, they would undertake to appear before the investigator or the concerned Court, if stage arises and how much time they need to return back to India from Italy

List on 07.05.2024."

4. Today, the petitioner's counsel submits that the petitioner complied with the above-said order, and state counsel Ms. Swati Batra, DAG, Punjab, has also acknowledged such compliance. Petitioner's counsel submits that as per page 66 of the petition, which is a stamp on the passport regarding the departure date, i.e., 16.09.2019, the petitioner has departed India on the said date. The petitioner claims that he did not return and that there is nothing to disbelieve in this regard.

5. Since the present FIR was registered on 01.02.2020 and after the petitioner left for Italy, it is strange how he would be aware of the issuance of summons/warrants and even proclamations. A perusal of the proclamation order dated 17.10.2022 passed by the concerned CJM, Faridkot, shows that the Court declared the petitioner Tejinder Singh and one Gurvinder Singh as proclaimed offenders simply because of the expiry period of 30 days. Earlier on 12.09.2022, vide Annexure P-6, ASI Gurdit Singh had made a statement about the proclamation issued against the petitioner and one Gurwinder Singh. The statement of ASI Gurdit Singh is annexed on page 52 of the petition, which reads as follows: -

"Stated that a proclamation under Section 82 CrPC in respect of the accused Tejinder Singh son of Harnek Singh resident of LehraDhurkot District Bathinda, Ex.PA was handed over to me by SHO PS City Faridkot for execution.

On dated 09.09.2022 I went to the given address and pasted one copy of the proclamation at the main gate of the house of the accused and pasted one copy of the proclamation at the common place and one copy of the proclamation was pasted at the notice board of the learned Court and my report is Ex.PB."

6. A perusal of the said statement reveals that the prosecution is complying with the provisions of Section 82 & 105 CrPC. Section 82 CrPC provides that affixation must be

made where the petitioner resides. Given above, the proclamation was not affixed in terms of section 82 (2) (i) (a) & (b) of CrPC, which mandate that the proclamation shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides; and it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village. None of these conditions were complied with, and the non-adherence to the procedure has rendered the proclamation illegal. Given the above, the impugned order dated 17.10.2022, passed by CJM Faridkot, deserves to be quashed and set aside.

7. Another reason to quash the proclamation is the statutory provision of Section 105 CrPC. It shall be relevant to extract Section 105 of CrPC, 1973, which reads as follows:

105. Reciprocal arrangements regarding processes.—

(1) Where a Court in the territories to which this Code extends (hereafter in this section referred to as the said territories) desires that—

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search-warrant, issued by it shall be served or executed at any place,—

(i) within the local jurisdiction of a Court in any State or area in India outside the said territories,

it may send such summons or warrant in duplicate by post or otherwise, to the presiding officer of that Court to be served or executed; and where any summons referred to in clause (a) or clause (c) has been so served, the provisions of section 68 shall apply in relation to such summons as if the presiding officer of the Court to whom it is sent were a Magistrate in the said territories;

(ii) in any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country or place for service or execution of summons or warrant in relation to criminal matters (hereafter in this section referred to as the

contracting State), it may send such summons or warrant in duplicate in such form, directed to such Court, Judge or Magistrate, and send to such authority for transmission, as the Central Government may, by notification, specify in this behalf.]

(2) Where a Court in the said territories has received for service or execution—

(a) a summons to an accused person, or

(b) a warrant for the arrest of an accused person, or

(c) a summons to any person requiring him to attend and produce a document or other thing, or to produce it, or

(d) a search-warrant, issued by—

(I) a Court in any State or area in India outside the said territories;

(II) a Court, Judge or Magistrate in a contracting State, it shall cause the same to be served or executed] as if it were a summons or warrant received by it from another Court in the said territories

for service or execution within its local jurisdiction; and where—
(i) a warrant of arrest has been executed, the person arrested shall, so far as possible, be dealt with in accordance with the procedure prescribed by sections 80 and 81,
(ii) a search-warrant has been executed, the things found in the search shall, so far as possible, be dealt with in accordance with the procedure prescribed by section 101:
[Provided that in a case where a summons or search-warrant received from a contracting State has been executed, the documents or things produced or things found in the search shall be forwarded to the Court issuing the summons or search-warrant through such authority as the Central Government may, by notification, specify in this behalf.

8. Thus, there is nothing to demonstrate that the State had either complied with the statutory provisions of Section 105 CrPC or were not required to comply such provisions.

9. Given above, order of proclamation dated 17.10.2022 is quashed and set aside. However, it is clarified that now the petitioner was aware of the FIR. Petitioner's counsel submits that they will appear before the trial Court and they be given reasonable time to appear.

10. Let the petitioner appear before the concerned Court on or before 31.05.2024. It is clarified that if the petitioner fails to appear, then this order shall stand recalled automatically without any further reference to this Court resorting to Section 362 r/w 482 CrPC, for the reason that this Court has intervened without even getting a response from the State Government and the State Government did not insist to the filing of the response because of the statement made on behalf of the petitioner that he shall put in an appearance before the concerned Court.

11. In *Himachal Pradesh Cricket Association v State of Himachal Pradesh*, **2018:INSC:1039 [Para 47]**, *2018 (4) Crimes 324*, Hon'ble Supreme Court holds "[47]. As far as Writ Petition (Criminal) No. 135 of 2017 is concerned, the appellants came to this Court challenging the order of cognizance only because of the reason that matter was already pending as the appellants had filed the Special Leave Petitions against the order of the High Court rejecting their petition for quashing of the FIR/Chargesheet. Having regard to these peculiar facts, writ petition has also been entertained. In any case, once we hold that FIR needs to be quashed, order of cognizance would automatically stands vitiated."

12. Continuing these proceedings will not suffice for any fruitful purpose. In the facts and circumstances peculiar to this case, the Court invokes the inherent jurisdiction under section 482 CrPC and quashes the order dated 17.10.2022, passed by CJM, Faridkot, and all subsequent proceedings qua the petitioner.

13. Petition is partly allowed in the terms mentioned above. All non-bailable warrants and LOCs issued in the above said FIR, shall remain stayed till 31.05.2024 at 5 PM. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

07.05.2024
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Whether speaking/reasoned: Yes
Whether reportable: YES.