

2024:PHHC:094137



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

Sr. No.124

CRM-M-33584-2024 (O&M)
Date of decision : 25.07.2024

Nirmal Singh

..... Petitioner

VERSUS

State of Punjab

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. S.S. Swaich, Advocate, for the petitioner.

KIRTI SINGH, J. (Oral)

1. By way of the present petition filed under Section 482 Cr.P.C. prayer has been made for quashing of the impugned order dated 28.11.2018, (Annexure P8) passed by the learned Judicial Magistrate, Ist Class, Fatehgarh Sahib in case CHI/133/2018 titled as 'State Vs. Harphul Singh and others' in FIR No.53 dated 10.06.2017 (Annexure P1), under Sections 149, 447, 147, 506 and 511 IPC, registered at Police Station Bassi Pathana, District Fatehgarh Sahib, vide which the petitioner has been declared as a proclaimed offender and the order dated 09.10.2018 (Annexure P6) passed in the said case whereby the learned trial Court issued proclamation under Section 82(2) (1) Cr.P.C against the petitioner.

2. Learned counsel for the petitioner *inter alia* submits that the petitioner has been falsely implicated in this case and no offence is made out against him. He further submits that the parties are relatives and there was a dispute over property in the family which has been amicably settled and the learned trial Court vide order dated 27.04.2022 has discharged all the accused in the present case.

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3. Further, learned counsel for the petitioner submits that the petitioner was never served in the present case through any mode of service. He also draws the attention of this Court to the copies of the zimni orders dated 08.06.2018, 07.07.2018, 04.08.2018, 29.08.2018 and 18.09.2018 passed by the trial Court. A perusal of the zimni order dated 29.08.2018 shows that the petitioner was reported to have gone abroad by his father Nirmal Singh and the learned trial Court issued non-bailable warrants against the petitioner. A perusal of the zimni order dated 18.09.2018 shows that non-bailable warrants of arrest of the petitioner were not received back and the fresh non-bailable warrants of arrest of the petitioner were issued for 09.10.2018.

4. Further, counsel for the petitioner submits that perusal of zimni order dated 09.10.2018 passed by the trial Court shows that non-bailable warrants issued against the petitioner were received back with the report of his mother that the petitioner has gone abroad. The learned trial Court after observing that there are sufficient reasons to believe that the accused was intentionally absconding to conceal his presence and to evade the process of the Court, issued proclamation under Section 82 (2) (i) Cr.P.C. Thereafter, vide order dated 28.11.2018, the trial Court declared the petitioner a proclaimed offender.

5. Learned counsel for the petitioner has vehemently argued that there has been non-compliance of Section 105 Cr.P.C. as once it was reported that the petitioner was living abroad, as observed in the zimni order dated 29.08.2018 (Annexure P5), the learned trial Court illegally issued non-bailable warrants against the petitioner and subsequently, the proclamation was issued under Section 82(2)(i) Cr.P.C. vide impugned order

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dated 09.10.2018 (Annexure P6) and thereafter, declaring the petitioner as proclaimed person vide impugned order dated 28.11.2018 without making any effort to serve the petitioner in Canada as per the procedure laid down under Section 105 Cr.P.C.

6. Notice of motion.
7. Mr. J.S. Dhaliwal, AAG, Punjab, accepts notice on behalf of the respondent-State and waives service and submits that there is no illegality or infirmity in the impugned order(s).
8. Heard rival submissions made by learned counsel for the parties.
9. From the perusal of record, it can be seen that admittedly, the matter stood amicably settled between the parties and the learned trial Court vide order dated 27.04.2022 has discharged all the accused in the present case. Further, the trial Court has not made any effort to effect personal service of the petitioner through the Embassy of India located in the concerned country where the petitioner was residing at the relevant time. Thus, making it clear that the impugned order(s) was not passed in consonance with the mandate of Sections 105 & 82 Cr.P.C. and is not sustainable in the eyes of law.
10. Accordingly, the present petition is allowed and the impugned order dated 28.11.2018 (Annexure P8) passed by the learned Judicial Magistrate Ist Class, Fatehgarh Sahib is set aside/quashed.
- Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

25.07.2024
Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No