

2024:PHHC:134977



116-2

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

CRM-M-40637-2024

DATE OF DECISION: 15.10.2024

DAVINDER SINGH

...PETITIONER

Versus

STATE OF PUNJAB AND ANOTHER ... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.Yashvir Balhara, Advocate for the petitioner(s).

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

The jurisdiction of this Court has been invoked under Section 528 of the BNSS has been invoked seeking quashing of proclamation order dated 16.03.2015 (Annexure P-6) passed by Additional Chief Judicial Magistrate, SBS Nagar in case FIR No. 10, dated 21.05.2014, under sections 420, 406 and 120-B IPC registered at Police Station NRI SBS Nagar and all other consequential proceedings emanating therefrom.

2. The case of the petitioner is that he had filed a petition for divorce and the summons were served upon the complainant on 09.04.2014. Thereafter, getting the summons the complainant became furious and with the help of her relatives she filed a complaint on 15.04.2014 on the basis of which the present FIR was registered 21.05.2014 against the petitioner, his father, mother and sister. The



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assertion is that the petitioner came to know that he has been shown residing at the address in India. Thus, because of wrong address mentioned in the complaint, the complainant has managed to initiate deliberately and with malafide adverse proclaimed person proceedings against the petitioner, which is totally in violation of provision of Section 82 Cr.P.C. The petitioner has also submitted a detailed representation dated 19.04.2015 but no vain.

3. Learned counsel appearing for the petitioner further asserts 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 FIR as well as complaint, he was not residing in India. The present FIR came to be registered on 21.05.2014 whereas during this time petitioner was already in UK and had no knowledge about the proceedings initiated against him.

4. On the other hand, learned State counsel, has submitted that the petitioner despite the proclamation had failed to appear before the trial Court and has rightly been declared proclaimed person, and in addition the petitioner is evading the process of court which is highly deprecated on his part. He also asserts that non-complying with the orders of the court 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 averments, the petitioner was resident of UK since his birth. 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 can be made on the judicial dictum rendered in 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. Reliance can also be placed upon the judgment of this Court rendered 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



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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. From the perusal of the case file as well from the support of the documents it can be inferred that the petitioner is a resident of UK since his birth, therefore, there was no occasion for her to evade the process of law intentionally, as he was never served in accordance with law. Thus the proclamation order dated 16.03.2015 (Annexure P-6) is in gross violation of Section 82 Cr.P.C.

10. Therefore in light of the afore-said judicial pronouncements and discussions made hereinabove, this Court is of the firm view that the impugned order dated 16.03.2015 (Annexure P-6), vide which the petitioner has been declared proclaimed person, is bad in law and not sustainable. Hence, the same deserves to be set aside.

11. In view of the above, the present petition stands allowed and the impugned order dated 16.03.2015 (Annexure P-6) is set aside.

(SANDEEP MOUDGIL)
JUDGE

15.10.2024
anuradha

Whether speaking/reasoned Yes/No
Whether reportable Yes/No