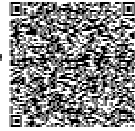


2024:PHHC:114155



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

Sr. No.115

CRM-M-41266-2024 (O&M)
Date of decision : 03.09.2024

Sultan Singh

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Ms. Pooja Jaglan, Advocate, for the petitioner.

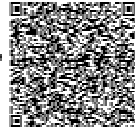
Mr. Gaurav Bansal, DAG, Haryana.

KIRTI SINGH, J. (Oral)

1. By way of the present petition filed under Section 482 Cr.P.C. prayer is for quashing of order dated 12.01.2016 (Annexure P2) vide which the petitioner was declared as proclaimed offender in FIR No.67 dated 25.04.2014, under Section 419, 420 & 120-B IPC, registered at Police Station Israna, Panipat.

2. Learned counsel for the petitioner *inter alia* submits that the petitioner has been residing in Australia since 2009 and has not visited India after year 2014. She relies upon the passport details of the petitioner Annexure P1. She further submits that the petitioner has been wrongly declared proclaimed offender vide order dated 12.01.2016 without any prior notice. She contends that the petitioner was never served through the Ministry of External Affairs, despite report dated 05.12.2015 (Annexure P4) by the Executing Officer wherein he clearly stated that the petitioner has been residing in Australia and without effecting the service of the petitioner at his foreign address, the learned trial Court has declared the petitioner as a

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Sections 82 & 105 of Cr.P.C. She further submits that all the accused including the main accused has been acquitted in the present case vide order dated 31.01.2023 (Annexure P6).

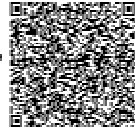
3. *Per contra*, learned State counsel, has submitted that the petitioner, despite the proclamation, has failed to appear before the trial Court and has been rightly declared a proclaimed offender vide the impugned order and in addition, the petitioner is evading the process of Court which is highly deprecated on his part and in view of above, he does not deserve the concession.

4. Heard the rival submissions made by learned counsel for the parties.

5. According to the averments, the petitioner has been residing in Australia since 2009 and has not visited India after year 2014 and he was never served through the Ministry of External Affairs, despite report dated 05.12.2015 (Annexure P4) by the Executing Officer wherein he clearly stated that the petitioner has been residing in Australia. Without effecting the service of the petitioner at his foreign address, the learned trial Court has declared the petitioner as a proclaimed offender without complying with the mandatory provisions of Sections 82 & 105 of Cr.P.C.

6. A person cannot be said to “*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

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of the warrant of arrest cannot be said to be absconding or concealing himself with the intention to disrupt the execution of that warrant.

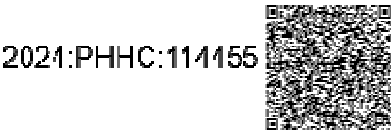
7. Reliance can also be placed upon the judgment of this Court rendered in CRM-M-1513-2009 tiled as “**Mehar Singh And Anr. vs State of Punjab**” wherein it was held as under:

“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 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.”

8. 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 was not passed in consonance with the mandate of Sections 82 & 105 of Cr.P.C. and is not sustainable in the eyes of law.

9. 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 12.01.2016 (Annexure P2), vide which the petitioner has been declared proclaimed offender, is not sustainable in the eyes of law.

10. In view of the above, the present petition stands allowed and the impugned order dated 12.01.2016 (Annexure P2) is set aside/quashed **subject to payment of Rs.25,000/- to be deposited in Poor Patient Welfare Fund, PGIMER, Chandigarh.** In case, the petitioner files an appropriate application for grant of bail before the trial Court within a period of three months, the trial Court shall consider the same and release him on bail on furnishing his requisite bail/surety bonds to its satisfaction.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

03.09.2024
Ramandeep Singh

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No