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

Sr. No.118

CRM-M-42043-2024 (O&M)
Date of decision : 02.09.2024

Sukhvir Kaur @ Sukho

..... Petitioner

VERSUS

Karnail Chand and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Ms. Komal Preet Kaur, Advocate, for the petitioner.

KIRTI SINGH, J. (Oral)

1. By way of the present petition filed under Section 528 Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity 'BNSS') prayer is for quashing of order dated 01.10.2022 (Annexure P4) passed by the learned Judicial Magistrate, Ist Class, Jalandhar vide which the petitioner was declared as proclaimed offender in complaint case bearing number COMI No.43/2016 titled as '*Karnail Chand Vs. Parmjit Kaur and others*' under Sections 504 & 506 of Indian Penal Code (for brevity 'IPC') and Section 3(i)(x) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity SC & ST Act).

2. The case of the petitioner is that abovesaid complaint was filed by respondent No.1-Karnail Chand against the petitioner and two other co-accused alleging that the petitioner and co-accused used defamatory language against the respondent No.1-complainant. Thereafter, vide order dated 19.04.2019, the petitioner along with other co-accused were summoned for commission of offence under Sections 506 and 506 IPC and Section 3(i) (x) of SC/ST Act, 1989. She further submits that the petitioner had gone abroad and consequently, due to non-appearance, the petitioner

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was declared proclaimed offender vide order dated 01.10.2022 by the Court of JMIC, Jalandhar.

3. Learned counsel for the petitioner contends that the petitioner was never served properly and further submits that vide orders dated 18.12.2021, 06.06.2022 and 11.07.2022 non bailable warrants issued were received back unserved as the petitioner had left for U.K. Thereafter, without effecting the service of the petitioner at her foreign address, the learned trial Court has declared the petitioner as a proclaimed offender without complying with the mandatory provisions of Section 82 Cr.P.C. She further submits that the co-accused have been declared innocent by the learned trial Court. Counsel for the petitioner further submits that the petitioner is coming back to India and she will move an appropriate application for grant of bail before the learned trial Court.

4. Notice of motion.

5. At the asking of the Court, Mr. R.S. Thind, DAG, Punjab, accepts notice on behalf of respondent-State and waives service.

6. *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 her part and in view of above, she does not deserve the concession.

7. Heard the submissions made by respective learned counsels for the parties.

8. According to the averments, the petitioner had left for U.K. and though the non-bailable warrants were issued against the petitioner vide order dated 11.07.2022, received back unserved with the report that she has

gone to U.K.

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

10. 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.”

11. A bare perusal of the orders dated 18.12.2021 and 06.06.2022 reflects that the nonailable warrants issued to the petitioner was not received back and vide order dated 11.07.2022 it has been observed that the petitioner had shifted to U.K. and the trial Court has not made any effort to effect personal service of the petitioner through the embassy of India located

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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.

12. 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 01.10.2022 (Annexure P4), vide which the petitioner has been declared proclaimed offender, is not sustainable in the eyes of law.

13. In view of the above, the present petition stands allowed and the impugned order dated 01.10.2022 (Annexure P4) 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, the trial Court shall consider the same and release her on bail on furnishing her requisite bail/surety bonds to its satisfaction.

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

(KIRTI SINGH)
JUDGE

02.09.2024
Kapil

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No