



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

118

CRM-M-47487-2024

DATE OF DECISION: 04.12.2024

KAWALJIT SINGH ALIAS KANWALJIT SINGH
...PETITIONER

Versus

STATE OF PUNJAB AND ANOTHER ... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. M.K.Hundal, 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 BNSS, 2023 praying for quashing of FIR NO. 107, dated 13.05.2011 under sections 419/420/465/468/471/120-B/511 of IPC (Annexure P-1) along with order dated 28.02.2013 (Annexure P-2) vide which the petitioner has been declared Proclaimed person, on the basis of compromise deed between the parties (Annexure P-5), as the complainant and petitioner are real father and son.

2. The case of the petitioner is that he went abroad in the year 2004, therefore, at the time of the registration of the FIR, he was not in India and was unaware of the present case, hence could not appear before the Trial Court. Learned counsel for the petitioner submits that the complainant was also aware of this fact but he intentionally named the petitioner in the instant FIR and 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.

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, he was not residing in India. The present FIR came to be registered on 13.05.2011 whereas during this time petitioner was already in abroad 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 in abroad in the year 2004 i.e. well before the relevant FIR was filed. 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 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.”

9. From the perusal of the case file as well from the support of the documents it can be inferred that the petitioner was not in India and was in abroad since the year 2004, therefore, there was no occasion for him to evade the process of law intentionally, as he was



never served in accordance with law. Thus the proclamation order 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 28.02.2013 (Annexure P-2) vide which the petitioner has been declared Proclaimed person, is bad in law and not sustainable. Hence, the same deserves to be set aside, however, subject to payment of cost of 5000 Euro (Austria) to be deposited in Chandi Kusht Asshram Society, (account No.1445265900) (IFSC Code KKBK0004211), Kotak Mahindra Bank, Sector 46-C Chandigarh.

11. In view of the above, the present petition stands allowed and the impugned order dated 28.02.2013 (Annexure P-2) is set aside with afore-said observations.

(SANDEEP MOUDGIL)
JUDGE

04.12.2024
anuradha

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