

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

207/2 CRM M-49433 of 2023
Date of Decision: 02.05.2024

Saikiran Madhavan ...Petitioner
Versus
State of U.T. Chandigarh ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Chanderhass Yadav, Advocate, for the petitioner.

Mr. Rajeev Anand, Additional P.P., for U.T., Chandigarh.

Ms. Satinder Kaur, Advocate
for the complainant.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to set aside the order dated 01.07.2023 (Annexure P-19) passed by the Court of Judicial Magistrate 1st Class, Chandigarh, whereby, the petitioner has been declared as proclaimed person in case FIR No. 80 dated 13.05.2022 under Sections 420/120-B IPC (Sections 177, 465, 467, 468, 471 and 34 IPC added later on), Police Station South Sector 34, Chandigarh.
2. Learned counsel for the petitioner contended that the petitioner is a green card holder of the United States of America and is residing in USA. He is also working on a very high post in a reputed multi national company and was wrongly arrayed as an accused in the present case. Even, the police conducted inquiry in the

present case three times and it was concluded that no case was made out against the present petitioner. Still further, the dispute in the present case pertained to the adoption of a child Advait Gupta/Aariket Madhavan, who was given in adoption by the complainant to the petitioner and his wife vide adoption/affidavit (Annexures P-1 and P-2, respectively), which were signed by the complainant also. Learned counsel further contended that in the present case, the dispute is pertaining to the alleged forgery of a date of birth certificate as well as passport issued by the competent Court, which was done at Delhi. Consequently, even, Chandigarh Police had observed that since the offence had taken place in Delhi, the complaint was transferred to the Delhi Police as Chandigarh Police had no jurisdiction over the matter. Apart from that, the complainant had also filed CRWP No. 820 of 2020, which was pending for adjudication before this Court. Still further, on 14.12.2020, the Hon'ble Supreme Court had granted the custody of Master Advait Gupta/Aariket Madhavan to the wife of the petitioner and also permitted her to go to U.S.A. During the course of investigation, it was found that the police had no jurisdiction over the matter and the police knew very well that the petitioner was residing in the United States of America. Still further, the police never took any action nor they were ever tried to serve the petitioner at his U.S.A. address. In fact, the petitioner had applied for grant of anticipatory bail before this Court on 01.06.2022, which was pending before this Court. Still further, after about 04 years of incident and

after about more than 01 year of the registration of the FIR, the prosecution moved an application for arrest of the petitioner. Consequently, the non-bailable warrants were issued for the service of the petitioner. Ultimately, vide order dated 15.04.2023, the IO moved an application for issuance of proclamation and the proclamation was ordered to be issued on the same date. Learned counsel for the petitioner further contended that the non-bailable warrants were served at the address of the parents-in-law of the petitioner. Even, the proclamation was published at New Delhi where the mother-in-law of the petitioner was residing and she had informed the Investigating Agency that the petitioner was resident of U.S.A. Even, the police was aware of the fact that the anticipatory bail petition, the petitioner had sent his affidavit from U.S.A. and the anticipatory bail petition was pending before the Court of Additional Sessions Judge, Chandigarh and notice had already been issued to the police. On one hand, the anticipatory bail petition of the petitioner was dismissed on 06.07.2023, whereas, vide the impugned order dated 01.07.2023, the respondent agency got proclamation published and declared the petitioner as a proclaimed offender. Learned counsel further contended that the petitioner had never absconded from the process of law and he had not only filed a petition for grant of anticipatory bail but also approached this Court with a prayer to quash the FIR against him. He further contended that the FIR in the present case was not maintainable as the competent Courts of law were already ceased of

the matter. Apart from that, the Investigating Agency did not follow the process as provided under Section 82 of the Code of the Criminal Procedure, which has been reproduced below:-

82. Proclamation for person absconding.

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows :-

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the court-house;

(d) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this Section have been complied with, and that the proclamation was published on such day.

(4) [Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459, or 460 of the Indian Penal Code (45 of 1860), and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).]

3. He further submitted that from the bare perusal of Section 82 of the Cr.P.C., the words “ordinarily resides”, have been mentioned and it was mandatory for the police to serve the petitioner at his residence. Still further, the proclamation was to be published/affixed to some conspicuous part of the house, in which, such person was ordinarily residing. In the instant case, the police made no efforts to serve the petitioner at his address at United States of America and without following the due process of law, the petitioner was declared as proclaimed person in exceptional hurry. Learned counsel further contended that even though the petitioner was availing the alternative remedies, still, the entire process of declaration of the petitioner as proclaimed person was hidden from him and he never had the knowledge of the pendency of any such proceedings against him. Even, the mother-in-law of the petitioner had informed the police, which is evident from the proceedings, that the petitioner was residing at U.S.A. and was not available in India.

4. Learned counsel also referred to the law laid down in the matter of **“Jagjit Singh and Others Vs. State of Punjab”** CRM-M-51993 of 2021 (O&M) decided on 20.12.2021 as under:-

5. Moreover, since the petitioners, from the date of registration of the FIR (supra), and, upto now, are in a foreign land, and, hence they could not render cooperation to the investigating officer concerned, thereupon, it was imperative for the investigating officer

concerned, to even if he intended to secure their appearances before him, or before the Court of law, to ensure that personal service of the process of Court, became through the embassy of India, located in U.K., hence effected upon, on each of the accused. However, the afore evidence is grossly amiss. Consequently, upon a valid personal service being made upon the accused by the investigating officer concerned, through the embassy of India, located at United Kingdom, and, thereafter theirs yet not recording their personal appearances, for the relevant purposes, either before the investigating officer, or before the learned Magistrate concerned, thereupon it was open for the latter to thereafter seek issuance of non-bailable warrants, from the learned Magistrate concerned, and, also the afore process was required to become personally served upon the petitioners, at their abode, in U.K. However, neither the investigating officer, has ensured the causing of personal service upon the accused at U.K., prior to the issuance of nonbailable warrants, as issued by the learned Magistrate concerned, nor the learned Magistrate concerned, has ensured that the non-bailable warrants became served personally upon the accused at U.K., hence through the aegis of the embassy of India, located in U.K. The effect of the afore nonrecoursings, is, that the impugned order declaring the petitioners, as proclaimed offenders, becomes quashed, and, set aside”.

5. On the other hand, the learned State counsel assisted by the learned counsel for the complainant vehemently opposed the submissions made by the petitioner on the ground that the petitioner

was evading the process of law and intentionally did not join the proceedings before the police. Apart from that, the wife of the petitioner had already applied for grant of anticipatory bail and was admitted to bail. However, it is admitted that the petitioner had already filed a petition, i.e. CRM M-24475 of 2022 titled as **“Saikiran Madhavan and another Vs. State of U.T. Chandigarh and another”** before this Court seeking quashing of the FIR. Learned counsel further contended that even multiple raids were conducted and notice under Section 41 of the Cr.P.C. had been served, but the petitioner was concealing himself without getting bail and there was no order of stay of arrest by any Court of law. However, the prosecution could not disclose the address, where, the petitioner was served. Learned counsel further contended that the petitioner was not found at the given address, i.e., B- 94, Shalimar Bagh, Delhi (West) and the mother-in-law of the petitioner was found at the said address and she refused to accept the warrants.

6. I have heard learned counsel for the parties and perused the record.

7. In the present case, admittedly, the petitioner was residing in U.S.A., when the summons/warrants were issued for his service. Even, the petitioner has placed on record the warrants/orders, which would clearly show that all the non-bailable warrants were issued at an address at Delhi, i.e., address of in-laws of the petitioner.

When the police had gone to execute the warrants, mother-in-law of the petitioner had informed the police that the petitioner was residing in U.S.A. and not at that address. Consequently, efforts should have been made by the police to serve the petitioner at the address, which was disclosed to the police by her. However, instead of making efforts to serve the petitioner at the address in U.S.A., the proclamation was also affixed at the New Delhi address, where the petitioner was not residing. Thus, it is clear that the petitioner was never served by the Investigating Agency either through the summons or through warrants. Even, as per the provisions of Section 82 of Cr.P.C., the proclamation has to be affixed at some conspicuous part of the house, in which, such accused ordinarily resides. In the present case, the Investigating Agency was well aware of the fact that the petitioner was ordinarily residing in U.S.A and not in Delhi. Thus, the mandatory provisions of Section 82 Cr.P.C. were not followed as no efforts were made to serve the present petitioner. Apart from that, as per the provisions of Section 82 of Cr.P.C., when a Court has reasons to believe that any person against whom a warrant has been issued by it, has absconded or his concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time. In the present case, the police was well aware of the fact that the petitioner had already applied for grant of concession of anticipatory bail, when the process regarding proclamation was going on. Apart

from that, the petitioner had also filed a criminal miscellaneous petition before this Court, seeking the quashing of the FIR in the present case. Thus, it cannot be said that the petitioner was absconding or was concealing himself, so that he will not be served with the summons/warrants. Rather, the petitioner had already invoked his legal remedies before the Courts of law for the redressal of his grievances and it could never be stated that he had absconded.

8. Thus, in view of the above discussion, the impugned order dated 01.07.2023 (Annexure P-19) passed by the Judicial Magistrate 1st Class, Chandigarh and all consequential proceedings arising therefrom are ordered to be quashed.

02.05.2024

amit rana

(N.S.SHEKHAWAT)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No