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

Sr. No.257

CRM-M-11190-2023 (O&M)
Date of decision : 22.01.2025

Amit Kumar

..... Petitioner

VERSUS

State of Punjab and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. S.S. Majithia, Advocate, for the petitioner.

Ms. Aakanksha Gupta, AAG, Punjab.

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 26.11.2013 (Annexure P2) vide which the petitioner has been declared proclaimed offender in case FIR No.5 dated 08.03.2013 under Sections 498-A, 406 and 120-B IPC registered at Police Station Women, District Amritsar City and order dated 09.11.2022 passed by the passed by the learned Addl. Sessions Judge, Amritsar vide which the revision against the above said order has been dismissed.

2. The case of the petitioner is that abovesaid FIR was registered at the instance of respondent No.2-Aarti alleging that the petitioner and co-accused used to harass respondent No.2. After presentation of the challan, the trial commenced and vide judgment dated 09.08.2017, the learned trial Court acquitted the co-accused. Due to non-appearance of the petitioner, proclamation proceedings were initiated and the petitioner has been declared proclaimed offender vide order dated 26.11.2023.

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3. Learned counsel for the petitioner contends that the petitioner was never served properly as the petitioner is a resident of New Zealand and left India in 2008 and he never visited to India after March, 2009. He has placed reliance upon the copy of the visa of the petitioner (Annexure P5). Learned trial Court without effecting the service of the petitioner at his foreign address, has declared the petitioner as a proclaimed offender without complying with the mandatory provisions of Sections 82 & 105 Cr.P.C. He further submits that the co-accused have been declared innocent by the learned trial Court. He also submits that in the impugned order, the learned trial Court has committed an error by mentioning the name of accused as Manjit Singh who is not related to this case. The parties have compromised the matter and they had even filed a petition seeking quashing of the abovesaid FIR on the basis of compromise, however, the same is pending before this Court. The petitioner is ready and willing to join the trial.

4. *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.

5. Heard the rival submissions made by learned counsels for the parties.

6. According to the averments, the petitioner had left for New Zealand in 2008, before the registration of the abovestated FIR and he has not returned to India since March, 2009.

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7. 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.

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. A perusal of the case in hand reflects that the petitioner had left for New Zealand in March, 2009 and the trial Court has not made any effort to effect personal service of the petitioner through the embassy of India

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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.

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 26.11.2023 (Annexure P2), vide which the petitioner has been declared proclaimed offender, is not sustainable in the eyes of law.

11. In view of the above, the present petition stands allowed and the impugned order dated 26.11.2023 (Annexure P2) is set aside/quashed **subject to payment of Rs.50,000/- 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 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

22.01.2025
Ramandeep Singh

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No