



CRM-M-26964-2017

-1-

264

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-26964-2017

Date of Decision:- 28.01.2025

Charanjit Singh Jaspal @ Charanjit Singh ...Petitioner

Versus

State of Punjab and another ...Respondents

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. R.S. Ghuman, Advocate for the petitioner.

Mr. Japjot Singh, AAG, Punjab.

Mr. J.S. Brar, Advocate for respondent No. 2.

AMARJOT BHATTI, J.(Oral)

Petitioner Charanjit Singh Jaspal @ Charanjit Singh filed petition under Section 482 Cr.P.C. for quashing of impugned order dated 25.11.2004 (Annexure P-13) passed by learned Judicial Magistrate First Class, Phagwara, District Kapurthala in FIR No. 99 dated 14.07.2004 under Section 498-A, 406, 506, 34 of IPC registered at Police Station Sadar Phagwara, District Kapurthala (Annexure P-1) alongwith all consequential proceedings arising therefrom in the interest of justice.

2. As per the facts of case narrated in aforesaid FIR, complainant Kamaljit Kaur filed written complaint against Charanjit Singh Jaspal @Charanjit Singh and others that she got married with Charanjit Singh Jaspal @ Charanjit Singh on 19.11.2000 according to Sikh rites and ceremonies at Phagwara. Out of this wedlock, no child was born. Earlier, accused No. 1 was married to Sukhwinder Kaur who was a Canadian citizen from whom he had taken divorce. Their marriage was registered at



CRM-M-26964-2017

-2-

Phagwara vide registration No. 432/MJ-11 dated 11.12.2000. Her parents had given huge dowry articles at the time of marriage and they had spent Rs. 7.2 lacs as per wishes of accused persons. Her parents gave Rs. 3 lacs to her husband and mother-in-law on their demand as travelling expenses for going to Canada. They lived as husband and wife from 19.11.2000 to 04.12.2000 at House No. 61-B, Satnampura, Phagwara alongwith other family members of accused. They were unhappy with dowry articles. Thereafter, they left for Canada and took away all dowry articles. Her husband sent documents for Visa application for Canada in April, 2001. Charanjit Singh Jaspal @ Charanjit Singh came to India for her interview in Canadian Embassy. Two days before interview, she came to know that her husband was earlier married twice and he had taken divorce from his wife two days prior her marriage. She was refused Visa to Canada. As per rule, Charanjit Singh Jaspal @ Charanjit Singh could not marry again within three months of divorce from previous marriage. Thereafter, her husband returned to Canada and told her that he will again apply for Visa if her parents could arrange Rs. 15 lacs for purchasing a Trollea. Thereafter, she did not get any response from her husband and in-laws. She was forced to sign divorce papers to which she did not agree. With these allegations, it was prayed that criminal case may be registered against accused persons.

3. Learned counsel representing petitioner argued that all allegations levelled in FIR were false. There was no demand of money or ill treatment to complainant. Petitioner took all necessary steps for taking complainant to Canada. He lived in India for a period less than one month and thereafter, he had sent papers to complainant for coming to Canada.



CRM-M-26964-2017

-3-

Unfortunately, she failed in interview and Visa was refused by Canadian Embassy. Communication/Rejection letters dated 17.12.2001 issued by Canadian High Commission, New Delhi are Annexures P-2 and P-3 respectively. Present petitioner again filed appeal against the denial of Visa to complainant which was also rejected. Copy of communication of Appeal Division, Immigration and Refugee Board of Canada are Annexures P-4 and P-5 respectively. After a long gap of four years, this FIR was registered.

It is pointed out that petitioner is a Canadian citizen. He was never served in the proceedings of FIR No. 99 dated 14.07.2004 (Annexure P-1). There was no compliance of mandatory provisions of Section 82 of Cr.P.C. He has been illegally declared as Proclaimed Offender vide impugned order dated 25.11.2004 passed by learned Judicial Magistrate First Class, Phagwara (Annexure P-13). It is further pointed out that Kamaljit Kaur has remarried on 14.09.2008 with one Ravinder Singh Nagra, a Canadian citizen and has immigrated to Canada. Copy of Marriage Registration Certificate of complainant is Annexure P-6. Other co-accused filed CRM-M-10561-2007 seeking quashing of FIR which was accepted vide judgment dated 24.07.2012 (Annexure P-7). Since present petitioner is a Canadian citizen he was not aware of said proceedings and was wrongly declared proclaimed offender vide impugned order dated 25.11.2004. Learned counsel also referred to process issued by the Court and report of serving Head Constable, Annexure P-8 to Annexure P-13, confirming the fact that petitioner was residing in Canada and he never resided on the address given on the process. There was no publication in



CRM-M-26964-2017

-4-

unrestricted newspaper having circulation in Canada nor any process was issued at the known address of petitioner in Canada. Therefore, impugned order dated 25.11.2004 (Annexure P-13) is not on sound footing and same may be quashed by accepting present petition.

4. Learned counsel representing State of Punjab alongwith learned counsel representing respondent No. 2 raised issue that he was always aware of proceedings which were going in FIR No. 99 dated 14.07.2004 (Annexure P-1). Other co-accused had filed CRM-M-10561-2007 which was decided on 24.07.2012 (Annexure P-7). They were other family members of present petitioner who sought quashing of aforesaid FIR, therefore, it cannot be believed that present petitioner was not aware of FIR registered against him on the statement of complainant Kamaljit Kaur. Till date, present petitioner has never joined investigation in the aforesaid FIR. Learned trial Court rightly issued the process i.e. his non-bailable warrants of arrest and when same were received back unexecuted, proclamation proceedings were started under Section 82 Cr.P.C. Proclamation proceedings were carried out in a proper manner. However, petitioner did not appear within the specified time period, therefore, he was rightly declared proclaimed person. Even at present, petitioner is in foreign country having no intention to join investigation. Therefore, petition filed by petitioner deserves dismissal.

5. I have considered the arguments and have gone through the record carefully. Aforesaid FIR No. 99 dated 14.07.2004 (supra) (Annexure P-1) was registered on the complaint of Kamaljit Kaur against her husband Charanjit Singh Jaspal @ Charanjit Singh alongwith other members of



family. She levelled allegations falling under Section 498-A, 406, 506, 34 of IPC. On the other hand, petitioner has given his own version regarding efforts made by him to sponsor his wife Kamaljit Kaur to Canada. Her case was rejected by Canadian Embassy and thereafter, appeal was preferred by him which was also dismissed. So far as allegations detailed in FIR and stand taken by petitioner in present petition, same cannot be decided in present petition.

Main controversy in present petition is challenge to order dated 25.11.2004 (Annexure P-13) vide which petitioner was declared proclaimed offender. Learned Judicial Magistrate First Class, Phagwara in order to procure presence of Charanjit Singh Jaspal @ Charanjit Singh son of Tarsem Singh issued non-bailable warrants of arrest by mentioning his address as House No. 61-B, Mohalla Satnampura, District Phagwara (Annexure P-8) and as per report of Head Constable Ravi Kumar dated 11.09.2004, it was reported that whereabouts of Charanjit Singh Jaspal @ Charanjit Singh were inquired from Krishan Kumar Sharma, resident of Satnampura who informed that he personally knew Charanjit Singh Jaspal @ Charanjit Singh who alongwith his family lives in America. He did not know his address or about his coming to India. On the basis of this report, learned Judicial Magistrate First Class, Phagwara started proclamation proceedings.

Section 82 of The Code of Criminal Procedure, 1973 deals with Proclamation which runs as under :-

“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 specific 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:—
- (i) (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 home-stead 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;
- (ii) 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 section [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).”

As per Form No. 4, proclamation was issued under Section 82 Cr.P.C. for 16.10.2004 and process was issued on 15.10.2004. Head Constable Ravi Kumar affixed proclamation on the door of address given in the process i.e. House No. 61-B, Mohalla Satnampura, Phagwara and affixed a copy at common place and another copy with report to the Court,

which is Annexure P-11. Even in this report, it has come on record that Charanjit Singh Jaspal @ Charanjit Singh had gone abroad. Copy of *zimni* order passed by learned Judicial Magistrate First Class, Phagwara dated 16.10.2004 is Annexure P-12, according to which statement of serving Constable was recorded and it was further adjourned for 15.11.2004 for awaiting presence of accused and thereafter, by passing impugned order dated 25.11.2004 (Annexure P-13), present petitioner was declared proclaimed person. Aforesaid process issued from time to time clearly indicates that accused mentioned in process was not given specified time of 30 days to appear in Court from the date of publishing such proclamation. Secondly, right from the very beginning, it was clear to Court that Charanjit Singh Jaspal @ Charanjit Singh was not residing in India. Even then there was no effort on the part of learned Judicial Magistrate First Class, Phagwara to procure presence by issuing publication in unrestricted newspaper in circulation in Canada. There is nothing on record to show that there was any effort to procure his service through Embassy or by following procedure prescribed under Section 105 of Cr.P.C. Therefore, from the aforesaid proceedings, it cannot be said that petitioner was ever served nor there is anything on record to presume that he was aware of proceedings against him and did not appear deliberately before the trial Court.

In the light of aforesaid facts and circumstances of case, petition filed by petitioner seeking quashing of impugned order dated 25.11.2004 (Annexure P-13) is accepted, as prayed for. Since, petitioner is in Canada, he is given three months to appear before Investigating

Officer/SHO Police Station concerned to join investigation in aforesaid FIR and in case petitioner appears within the span of three months from the date of passing of this order, he be not arrested even during transit in this FIR and on his appearance be released on bail to the satisfaction of IO/SHO Police Station concerned.

6. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

28.01.2025
lalit

(AMARJOT BHATTI)
JUDGE

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