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

Sr. No.132

**CRM-M-21650-2025 (O&M)
Date of decision : 28.04.2025**

Gautam Sharma

..... Petitioner

VERSUS

State of Punjab and another

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Umesh Aggarwal, 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 06.10.2023 passed by the learned Judicial Magistrate, Ist Class, Amritsar vide which the petitioner was declared as proclaimed offender in FIR No.51 dated 14.10.2022, registered under Sections 406 & 498-A IPC, at Police Station Women, Amritsar and for quashing of FIR No.101 dated 19.10.2023, registered under Section 174-A IPC, registered at Police Station Women, Amritsar.

2. Learned counsel for the petitioner submits that marriage between the petitioner and respondent No.2 was solemnized on 10.12.2022 and out of the said wedlock, no child has been born. Unfortunately, on account of temperamental differences, the petitioner and respondent No.2 could not continue their lives as husband and wife and consequently, respondent No.2 got registered the present FIR to falsely implicate the petitioner. However, now, the matter stands settled amicably between the parties, for which, a written compromise dated 10.02.2025 has also been

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executed between the parties, and a joint petition under Section 13-B HMA has also been filed on 14.02.2025. Insofar as the proclamation order of the petitioner is concerned, learned counsel contends that the petitioner was never served properly and that order dated 06.10.2023 was erroneously passed by the JMIC, Amritsar vide which the petitioner was wrongly declared as proclaimed person in the abovesaid FIR. It is submitted that the petitioner has been residing abroad since 12.03.2022, which was the case even prior to the registration of the instant FIR. Thereafter, without effecting the service of the petitioner at his foreign address, the learned trial Court has declared the petitioner as a proclaimed offender without complying with the mandatory provisions of Sections 82 and 105 Cr.P.C.

3. Notice of motion.

4. At the asking of the Court, Mr. Davinder Bir Singh, Senior DAG, Punjab, Punjab, accepts notice on behalf of respondent No.1-State and waives service. He 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. Mr. Prateek Sodhi, Advocate, puts in appearance on behalf of respondent No.2 and filed his power of attorney. The same is taken on record. He has admitted the factum of compromise effected between the parties.

6. Heard the submissions made by learned counsels for the parties.

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7. According to the averments, the petitioner was residing abroad at the time of registration of the FIR and was not duly served in compliance of the mandatory provisions contained under Sections 82 & 105 Cr.P.C.

8. 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.

9. 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.”

10. A perusal of the judicial record reveals that no effort was made to effect personal service of the petitioner through the embassy of India located in the concerned country where the petitioner was residing at the

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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.

11. 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 06.10.2023 passed by the JMIC, Amritsar, vide which the petitioner has been declared proclaimed offender, is not sustainable in the eyes of law.

12. In view of the above, the present petition stands allowed and the impugned order dated 06.10.2023 passed by the JMIC, Amritsar is set aside/quashed **subject to payment of Rs.50,000/- to be deposited by the petitioner(s) 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. Since the proclamation order stands quashed, therefore, as a corollary, the consequent FIR No.101 dated 19.10.2023 under Section 174-A, registered at Police Station Women, Amritsar culminating from the proclamation proceedings also stand quashed, subject to compliance of the condition contained hereinabove.

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

(KIRTI SINGH)
JUDGE

28.04.2025
Ramandeep Singh

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No