



CRM-M-29745-2016 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-29745-2016 (O&M)

Date of Decision:- 08.04.2025

Lakhwinder Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Vivek K. Thakur, Advocate
for the petitioner.

Mr. Japjot Singh, AAG, Punjab.

Mr. Dheeraj Mahajan, Advocate with
Mr. Jasjit Singh Saini, Advocate
for respondents No. 2 and 3.

AMARJOT BHATTI, J.(Oral)

1. Petitioner Lakhwinder Singh has filed petition under Section 482 of Cr.P.C. for quashing of FIR No. 96 dated 15.06.2009 registered under Section 498-A/506 of IPC registered at Police Station Tanda, District Hoshiarpur (inadvertently wrong translated FIR has been annexed in present case as Annexure P-1, however, vernacular of aforementioned FIR is placed on record) and order dated 07.01.2012 passed by learned Judicial Magistrate Ist Class, Dasuya (Annexure P-4) and subsequent proceedings arising therefrom.

2. As per the facts narrated in vernacular FIR No. 96 dated 15.06.2009 registered under Section 498-A/506 of IPC registered at Police Station Tanda, District Hoshiarpur, Surinder Kaur wife of Dalip Singh filed written complaint that marriage of her daughter Narinder Kaur was



performed about 6 years ago with Lakhwinder Singh son of Surat Singh. His brothers Tarsem Singh, Sukhwinder Singh, their wives Kulbir Kaur and Paramjit Kaur, Bikramjit Singh and Narinder Singh brothers-in-law (being husbands of sisters of Lakhwinder Singh), Sukhwinder Kaur and Balwinder Kaur sisters of husband and Ajit Kaur (mother-in-law) started harassing her daughter on account of demand of dowry. Matter was compromised with intervention of Panchayat. For some time they provided maintenance to her daughter. Few days ago another compromise took place, according to which it was agreed to give Rs. 7,000/- per month to his daughter. Instead of providing her maintenance, she was beaten up and turned out of the matrimonial home. On the instigation of Malook Singh and Sudar Singh, they have no fear and they proclaimed that the boy Lakhwinder Singh is abroad, therefore, nobody can do anything to them. With these allegations matter was investigated and finally FIR was registered.

3. Learned counsel for petitioner argued that Lakhwinder Singh is residing in France since April 2004. Present FIR has been registered after a delay of 4 years. Narinder Kaur – respondent No. 3 is still residing in the house constructed by petitioner. Whereas, petitioner has been declared proclaimed offender by police of Police Station Tanda. From the contents of FIR, it is clear at that time petitioner was residing abroad. Investigating Agency filed application for issuance of his arrest warrants (Annexure P-5). There is order dated 07.10.2011 passed by learned Judicial Magistrate Ist Class (Annexure P-3) vide which proclamation proceedings were initiated against him. Statement of Head Constable Rajinder Singh is Annexure P-2 and ultimately by passing impugned order dated 07.01.2012



(Annexure P-4), he was declared proclaimed offender and it was ordered to proceed under the provisions of Section 174-A of IPC. In fact, petitioner was already residing abroad and this fact was well within the knowledge of respondents No. 2 and 3 as well as to the knowledge of Investigating Officer. No proper procedure was followed to procure his presence or for carrying on proclamation proceedings. Therefore, impugned order dated 07.01.2012 (Annexure P-4) is liable to be quashed.

4. Secondly, it is argued that contents of FIR clearly show that there are no specific allegations against petitioner regarding maltreatment on account of demand of dowry nor he has ever threatened his wife in any manner. Earlier, respondent No. 3 had filed a complaint levelling false allegations on the basis of which another FIR No. 63 dated 16.04.2009 was registered under Sections 323, 341, 506, 148, 149 of IPC at Police Station Sadar, Gurdaspur in which they were acquitted vide judgment dated 20.08.2014 in Criminal Case No. 345 dated 16.09.2009 (Annexure P-7). Appeal preferred against that judgment was also dismissed by learned Additional Sessions Judge, Gurdaspur vide judgment dated 21.04.2015. Present FIR has been registered when he was in foreign country, therefore, same be quashed qua petitioner.

5. Learned counsel representing respondents No. 2 and 3 filed written reply taking the stand that petitioner has already been declared proclaimed offender by the competent Court of law vide order dated 07.01.2012 and till date he has failed to surrender and join investigation. Learned counsel for respondents No. 2 and 3 referred to the order passed by this Court dated 10.11.2017 vide which petitioner was granted an



opportunity to surrender and move application for bail before the trial Court within 45 days and on that he was to be admitted on bail. Despite this order, petitioner has failed to surrender. During the pendency of this case, petitioner had alleged that he was ready to rehabilitate the wife and minor daughter born out of this wedlock but failed to comply said undertaking. In fact, wife and minor daughter are not being paid maintenance for their subsistence. It is further claimed that house was constructed by respondent No. 3 and her parents to secure the future of respondent No. 3 and her daughter. Petitioner has made misleading statements and has failed to surrender despite given an opportunity vide order dated 10.11.2017. Petition filed by petitioner seeking quashing of proclamation order dated 07.01.2012 as well as present FIR, deserves dismissal.

6. Learned counsel representing State filed status report confirming registration of FIR. It is pointed out that petitioner did not join investigation and he was rightly declared proclaimed offender by adopting proper procedure as provided in Code of Criminal Procedure. Challan was presented and proceedings were conducted under Section 299 Cr.P.C. by the then Sub Divisional Judicial Magistrate, Dasuya on 19.02.2016 and thereafter file was consigned to record room. There are specific allegations of harassment and maltreatment on account of demand of dowry against petitioner. Therefore, petition filed by petitioner may be dismissed.

7. I have considered the arguments and have gone through the record carefully. Present FIR has been registered due to matrimonial dispute, on the statement of Surinder Kaur complainant/respondent No. 2 who is mother of victim Narinder Kaur arrayed as respondent No. 3. It is



specifically alleged that respondent No. 3 Narinder Kaur was maltreated in the matrimonial home on account of demand of dowry. Matter was compromised several times with the intervention of Panchayat and maintenance was also fixed for respondent No. 3 and her daughter, but it did not last for long and finally family members staying in India refused to honour said compromise. It is not disputed that Lakhwinder Singh is settled abroad and at present he has been declared proclaimed offender. Petitioner Lakhwinder Singh being husband of respondent No. 3 is main accused who has left his wife and minor daughter at the mercy of his other family members. During the pendency of this petition, petitioner was directed to provide maintenance to his wife and minor daughter. It further appeared that he had positive intention to compromise with his wife. But fact remained that petitioner did not visit India despite given interim relief vide order dated 10.11.2017. Till date petitioner has failed to join investigation. He being main accused cannot escape his liability towards his wife and minor daughter. Since the day of marriage, respondent No. 3 is left alone in India who is also mother of a daughter born out of this wedlock. Till date there is no effort on the part of petitioner either to join the company of his wife in India or to take her along with child where he is settled. Therefore, private respondents are facing mental cruelty on account of conduct of petitioner.

In the light of aforesaid factual position, I do not find it appropriate to quash FIR No. 96 dated 15.06.2009 registered against petitioner under the provisions of Section 498-A/506 of IPC at Police Station Tanda, District Hoshiarpur and prayer of petitioner on this point is



declined.

8. Other aspect of present case is challenge to impugned order dated 07.01.2012 (Annexure P-4) passed by learned Judicial Magistrate Ist Class, Dasuya vide which petitioner has been declared as proclaimed offender (In fact proclaimed person). There is application filed by SI Shiv Singh, Police Station Tanda dated 01.07.2010 (Annexure P-5) vide which there was a prayer before the Court for issuance of arrest warrants of accused Lakhwinder Singh. There is order dated 07.10.2011 (Annexure P-3), according to which non-bailable warrants of arrest qua Lakhwinder Singh were received back unserved with report that he was residing in France for the last 8/9 years, as a result, proclamation proceedings were initiated under Section 82/83 Cr.P.C. for 07.12.2011. Since petitioner was in foreign country, there was no effort on the part of Investigating Agency to initiate proceedings under Section 105 Cr.P.C. Statement of Head Constable Rajinder Singh was recorded on 17.12.2011 (Annexure P-2), according to which proclamation was effected on 05.12.2011. Next date fixed in the case was 07.12.2011. On this date, it was adjourned for 07.01.2012 (Annexure P-3 colly). Proclamation order was passed on 07.01.2012.

The provisions of Section 82 of Code of Criminal Procedure, 1973 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 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 :-

(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 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;

(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 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).]”



As per the aforesaid provisions, accused was required to be given period of 30 days for appearance before trial Court from the date of proclamation. In the case in hand, order for proclamation was passed on 07.10.2011 for 07.12.2011. Proclamation was done on 05.12.2011 i.e. two days prior to date fixed, as per statement of HC Rajinder Singh (Annexure P-2). Therefore, clear 30 days were not available for petitioner/accused to put in his appearance and ultimately petitioner was declared proclaimed offender on 07.01.2012 (Annexure P-4). Therefore, in the case in hand, no proper proclamation proceedings were carried out in terms of Section 82 of Cr.P.C. Therefore, impugned order dated 07.01.2012 (Annexure P-4) is not sustainable in the eyes of law and same is accordingly set aside.

9. It cannot be ignored that vide order dated 10.11.2017, present petitioner was given an opportunity to surrender within 45 days and to file application for bail, which he failed to comply. Therefore, petitioner is not entitled to any further relief. Trial Court is at liberty to issue fresh proclamation as provided under the provisions of Sections 82/83 of Cr.P.C./Sections 84/85 of BNSS.

With this observation, present petition is partly accepted and disposed of accordingly.

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

08.04.2025

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(AMARJOT BHATTI)
JUDGE

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