



CRM-M-59384-2024 (O&M)

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

Sr. No.131

CRM-M-59384-2024 (O&M)

Date of decision : 01.04.2025

John Bhagat

..... Petitioner

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. Sandeep Arora, Advocate for the petitioner.

Mr. Davinder Bir Singh, Senior DAG, Punjab.

KIRTI SINGH, J. (Oral)

1. The prayer in the present petition filed under Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 is for quashing of order dated 20.08.2016 (Annexure P-6) passed by the learned JMIC, Jalandhar, vide which the petitioner was declared as proclaimed offender in case FIR No.32 dated 30.03.2016, under Sections 406 and 498-A IPC, registered at Police Station Women Cell, District Jalandhar.

2. The case of the petitioner is that abovesaid FIR was lodged on the basis of complaint made by the wife of the petitioner against the petitioner and other co-accused alleging that the family members of the petitioner were harassing the complainant for demand of dowry. He submits that the petitioner left the country before registration of the FIR and was in Australia and was never served on his foreign address. The learned Trial Court without complying with the provisions under Sections 82 and 105 Cr.P.C., vide order dated 20.08.2016 (Annexure P-6) declared the petitioner as a proclaimed offender. Counsel for the petitioner further submits that the petitioner is coming back to India and is ready and willing to join the trial.



3. *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 her part and in view of above, he does not deserve the concession.

4. Heard the submissions made by respective learned counsels for the parties.

5. According to the averments, the petitioner had left for Australia and though the non-bailable warrants were issued against the petitioner, same were received back unserved.

6. 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.

7. 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.”

8. Learned trial Court has not made any effort to effect personal service of the petitioner through the embassy of India 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.

9. 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 20.08.2016 (Annexure P-6), vide which the petitioner has been declared proclaimed offender, is not sustainable in the eyes of law.

10. In view of the above, the present petition stands allowed and the impugned order dated 20.08.2016 (Annexure P-6) is set aside/quashed **subject to payment of Rs.50,000/- to be deposited in Poor Patient Welfare Fund, PGIMER, Chandigarh.** However, the petitioner is directed to surrender before the Court concerned within a period of one month and move an appropriate application alongwith receipt of cost and the trial Court concerned would release the petitioner on the bail bonds and surety bonds to



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its satisfaction. In case he fails to appear before the trial Court on the said date, this order would be of no avail to the petitioner.

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

(KIRTI SINGH)
JUDGE

01.04.2025

Kapil

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No