2025:PHHC:002796

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-64260-2024
Date of decision: 09.01.2025

ARVINDER SINGH

...Petitioner(s)

VERSUS

STATE OF PUNJAB AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Siddharth Gupta, Advocate for the petitioner.

Mr. P. S. Bhandari, AAG, Punjab.

Mr. Jatinderpal Singh, Advocate for respondent No.2.

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JASGURPREET SINGH PURI, J. (Oral)

1. The present petition has been filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for setting aside the order dated 03.12.2024 (Annexure P-16) passed by the learned Additional Chief Judicial Magistrate, Moga, whereby an application dated 16.11.2024 (Annexure P-13) filed by the petitioner seeking permission for visiting Australia for a period of six months has been dismissed.

2. On the last date of hearing i.e. 20.12.2024, notice of motion was issued and on the asking of the Court, learned State counsel had appeared and accepted notice on behalf of respondent No.1-State.

3. Today, learned counsel for respondent No.2 has also appeared and has advanced his arguments.

4. Learned counsel for the petitioner while giving the facts of the case submitted that it is a case where there was a matrimonial dispute between the petitioner and his wife (daughter of respondent No.2) and their marriage was solemnized in India on 31.01.2018. He further submitted that the petitioner was an Australian citizen at the time of solemnization of marriage, whereas the wife of the petitioner was not even a permanent resident nor was she having any Visa and it was on the basis of the aforesaid marriage that she obtained the aforesaid benefit of spouse Visa and she went to Australia on 02.05.2018 i.e. few months after the marriage and thereafter, she never returned to India. He further submitted that the relationship between the petitioner and his wife turned sour and a matrimonial dispute arose. He further submitted that it was because of the aforesaid matrimonial dispute between both the parties, who were residing in Australia that the present FIR was registered on the basis of a complaint of the father of the wife of the petitioner i.e. respondent No.2 on 11.12.2018 under Sections 406 and 498-A of the IPC at Police Station NRI, District Moga and in the aforesaid FIR, not only the petitioner but also the parents and sister of the petitioner were arraigned as accused. He further submitted that since the aforesaid co-accused were residing in India, they started facing the trial but so far as the present petitioner is concerned, he was residing in Australia and he did not face the trial and qua him the challan was not presented. He also submitted that thereafter, when the petitioner came to know that some proceedings for declaring him as a proclaimed offender were initiated and even a look out notice was issued, he immediately decided to come back to India to face the trial and to surrender before the Court and when he came back to India

on 25.10.2024, he was arrested by the police at the Airport and thereafter, he applied for bail and he has been granted bail by the learned trial Court. He further submitted that till date even the challan qua the petitioner has not been presented.

5. Learned counsel for the petitioner submitted that it is a case where the present litigation based upon the lodging of the FIR by the father of the wife of the petitioner i.e. respondent No.2 is a proxy litigation because the complaint has been filed by the father of the wife of the petitioner and not by his wife nor did she ever came back to India for deposing before the Court or for recording any statement either before the police or before the Court and such kind of proxy litigation on behalf of the wife of the petitioner by her father was nothing but an abuse of the process of law in order to capitalize out of the matrimonial discord between the parties.

6. Learned counsel for the petitioner further submitted that it is a settled law that such kind of proxy litigation is not permissible and even if an FIR is lodged on behalf of the victim, the same can only be lodged under certain circumstances but it is a duty of the victim to at least subject herself to the process of law and the result of the same was that the parents and sister of the petitioner have faced litigation for about five years for no fault of the petitioner at all.

7. Learned counsel for the petitioner also submitted that rather it is a case where the wife of the petitioner, who had gone to Australia on the strength of spouse Visa had a matrimonial discord with the petitioner in Australia and thereafter, rather the marriage between the petitioner and his wife was dissolved

by a decree of divorce by the Court of competent jurisdiction of Australia, which has been attached with the present petition as Annexure P-3 and the aforesaid decree of divorce was passed in the year 2020, which was duly acknowledged by the wife of the petitioner vide Annexure P-2, which bears her signature, whose name is Komal Kaura. He further submitted that the wife of the petitioner never challenged the aforesaid decree of divorce and it is a settled law that a foreign judgment is binding upon the parties. He also referred to Section 13 of the Code of Civil Procedure in this regard and submitted that it is not a case of uncontested or *ex parte* divorce but it was a contested case duly acknowledged by the wife of the petitioner but in order to capitalize and abuse the process of law through her father, the aforesaid FIR was lodged against the petitioner and his relatives.

8. Learned counsel for the petitioner further submitted that the petitioner has come back to India and since he is a citizen of Australia, he is having a Visa valid only upto 22.10.2025 but with a condition that the continuous stay in India on each entry should not exceed 90 days. He referred to the relevant column of the aforesaid Annexure P-9, wherein it has been so specifically stated that the continuous stay in India on each entry should not exceed 90 days and since the petitioner came back to India on 25.10.2024, the last date till when he can stay in India is 24.01.2025. He further submitted that in case the petitioner does not go back to Australia within the aforesaid period of 90 days, then his stay in India would otherwise be illegal being an overstay and his citizenship of Australia would also be at stake. He further submitted that not only this, the petitioner is having a business in Australia for last so many

years and in case he does not go back to Australia to look after his business, then he might loose the same. He also submitted that the learned trial Court has dismissed the application of the petitioner for grant of permission to travel abroad vide Annexure P-16, in which one of the grounds so stated was that since no challan has been presented before the Court, the permission is not required, whereas in fact the petitioner has already been admitted on bail and it is the duty of the petitioner to seek permission of the Court before proceeding abroad since he is out on bail.

9. Learned counsel for the petitioner further submitted that he has specific instructions from the petitioner to state that the petitioner seeks permission to go to Australia only for a period of three months and he will come back to India within a period of three months and thereafter, will again face the trial as he is ready and willing to face the trial in accordance with law. He further submitted that in case the petitioner does not go back to Australia once, then his stay in India would become illegal and will lead to further complications.

10. Learned counsel for the petitioner also referred to a judgment passed by a Coordinate Bench of this Court in ***Baljinder Singh and another versus State of Punjab and another, CRM-M-25501-2020,*** decided on ***05.12.2024*** and submitted that such kind of proxy litigation at the instance of the parents of the girl etc. is nothing but an abuse of the process of law and particularly in view of the fact that in the present case, the wife of the petitioner is not only bound by the decree of divorce which has been granted by the country of Australia but apart from the above, she has rather got re-married and

in order to substantiate his argument regarding the same, he referred to Annexure P-5 to show that now the name of the wife of the petitioner has been changed from Komal Kaura to Komal Bhullar, which is a status report of application for migration to Australia and in this way, rather the further continuation of the prosecution against the petitioner and his family members is *ex facie* an abuse of the process of law only with the purpose to capitalize out of the situation.

11. Learned counsel for the petitioner also submitted that he has further categorical instructions from the petitioner to state that the petitioner is ready to furnish any kind of security or bank guarantee as determined by this Court so as to secure his presence back to face the trial but his right to livelihood being a part of the business and also his right to stay in India within the prescribed period should not be jeopardized only because of the aforesaid issue and particularly in view of the fact that respondent No.2 is pursuing a proxy litigation on behalf of his daughter, who is an ex-wife of the petitioner.

12. On the other hand, learned State counsel submitted that the petitioner came back to India after five years and because of him, the trial has been prolonged and he was arrested by the police at the Airport and was thereafter, granted bail by the learned trial Court and therefore, it cannot be said that the petitioner will certainly come back to India within the time of which he has proposed.

13. Learned counsel for respondent No.2 has also opposed the grant of permission to the petitioner to go abroad on the ground that the petitioner deliberately did not come back to India to face the trial and not only did he not

return back but rather a look out notice was issued against him so that he could have face the trial in a *bona fide* manner but he deliberately did not come back to India and therefore, he is not entitled for permission to go aboard. He also submitted that so far as the re-marriage of the wife of the petitioner is concerned, he is not sure about the same because he has not sought instructions with regard to the same and so far as the reference to Annexure P-5 made by the counsel for the petitioner is concerned, he is unable to comment upon the same. On factual aspect, he has however submitted that it is correct that the wife of the petitioner had gone to Australia on 02.05.2018 and till date, she has not returned back to India nor has she got her statement recorded either before the police or before the learned trial Court, although one application was filed for seeking permission to record her statement by way of video conferencing but the same was declined. He further submitted that in view of the aforesaid facts and circumstances, the petitioner is not entitled for grant of permission to travel abroad.

14. I have heard the learned counsels for the parties.

15. It is a case where the petitioner, who is the husband and his wife (daughter of respondent No.2) are now residents of Australia. The petitioner is stated to be the citizen of Australia much prior to his marriage. The wife of the petitioner had gone to Australia after marriage on spouse Visa on 02.05.2018 but thereafter, she never returned back. The present FIR has been lodged on 11.12.2018 i.e. after she left for Australia by her father i.e. respondent No.2. There is no doubt that for the lodging of the FIR, there can be any informant because the purpose of the FIR is to inform the police with regard to

commission of an offence. However, that would not mean that after the lodging of the FIR, the proxy litigation, if any, is to continue because the process of the Court would start after the presentation of challan and the trial would start after the framing of the charges and as per the learned counsels for the parties, the wife of the petitioner has never come back to India even for getting her statement recorded. Reference has been made by the learned counsel for the petitioner on the judgment passed by a Coordinate Bench of this Court in ***Baljinder Singh's case (Supra),*** wherein it has been held as under:-

> *"13. Of late, this Court has observed a disturbing trend where criminal prosecution is initiated in matrimonial disputes in India by foreign nationals, who have voluntarily availed citizenship of another country and are in continuous residence there. In doing so, they have submitted themselves to the jurisdiction of foreign Courts of the competent jurisdiction. As in the present case, more often than not, the couple involved have already obtained a divorce and settled issues pertaining to spousal support, custody of children and such by the approaching the Courts of the country of their residence. However, merely for the purpose of harassment, criminal complaints are filed in India. When the matrimonial disputes stand settled by the concerned forum abroad, proxy litigation in India cannot be allowed to be commenced in India to satisfy personal spite. This Court strongly condemns such unscrupulous and unethical practice and is of the stern opinion that the stream of justice must not be allowed to be clogged by ill-intended, vexatious proceedings which further burdens the already overworked Courts. The odious act of initiating criminal prosecution to harass hapless relatives residing in India is clearly an atrocious abuse of the process of law, which cannot go unchecked. The sanctity of the*

> *judicial process cannot be allowed to be smeared by letting ill-intentioned, resentful litigants to use it as an instrument of oppression."*

16. A perusal of the Visa of the petitioner (Annexure P-9) would show that although the expiry date of the aforesaid Visa is 22.10.2025 but it has been specifically incorporated therein that the continuous stay in India on each entry should not exceed 90 days and as per the learned counsels for the parties, the last date of expiry of 90 days is 24.01.2025. During the course of arguments, learned counsel for respondent No.2 also submitted that there can be an application for extension of the aforesaid Visa as well but the learned counsel for the petitioner has stated that no such application has been filed. However, this Court would not go into the aforesaid issue as to whether there can be an extension of Visa or not but certainly the period of 90 days would expire on 24.01.2025 and in case the aforesaid Visa is not extended, then the stay of the petitioner in India for exceeding 90 days would certainly be illegal.

17. So far as the right of the petitioner to seek permission to travel abroad is concerned, since the petitioner is already on bail, it is the duty of the petitioner to seek permission of the Court before travelling abroad because he has already subjected himself to the process of law, may be after a period of five years. It is also an admitted position between the parties that the petitioner was never declared as a proclaimed offender at any stage.

18. Considering the aforesaid totality of facts and circumstances, this Court is of the considered view that the petitioner should be granted permission to travel aboard i.e. Australia for a period of three months. However, certain conditions are required to be imposed upon the petitioner.

19. Consequently, the present petition is allowed. The impugned order dated 03.12.2024 (Annexure P-16) passed by the learned Additional Chief Judicial Magistrate, Moga, is hereby set aside. The petitioner is permitted to visit Australia for a period of three months and he shall positively return back by 21.04.2025 to India.

20. This Court again inquired from the learned counsel for the petitioner as to whether the petitioner undertakes to come back to India by 21.04.2025 or not, to which he submitted that he has specific instructions from the petitioner to state that whatever date is fixed by this Court, he will come back to India by the aforesaid date. The aforesaid permission to travel abroad i.e. Australia for a period of three months is granted to the petitioner, subject to depositing an amount of Rs.20,00,000/- (Rupees Twenty Lakhs) as security by him before the learned trial Court, which shall be kept in the form of FDR. After the return of the petitioner, the same shall be given back to him. In case the petitioner does not return back to India by the aforesaid stipulated date of 21.04.2025, then the aforesaid amount shall stand forfeited to the State.

(JASGURPREET SINGH PURI)
JUDGE

09.01.2025
Chetan Thakur

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