

240 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-22966-2016 (O & M)
Date of decision: 20.12.2023

POLA SINGH AND ANR

...PETITIONERS

V/S

THE STATE OF PUNJAB AND ANR

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. G.S. Sandhu, Advocate for the petitioners.

Mr. Madhur Sharma, AAG, Punjab.

None for respondent No.2.

HARPREET SINGH BRAR J. (ORAL)

This is the first petition filed under Section 482 of Code of Criminal Procedure with a prayer to quash the complaint No.25 dated 07.06.2007 titled as *Gulzar Singh versus Ajit Singh and others* (Annexure P-3), summoning order dated 30.03.2013 (Annexure P-4) and order declaring the petitioners as proclaimed offenders dated 02.04.2014 (Annexure P-8) passed by the Judicial Magistrate Ist Class, Rajpura and further prayer is for staying all the subsequent proceedings arising out of the aforementioned complaint.

2. Learned counsel for the petitioner wishes to withdraw his prayer with regard to quashing of the complaint bearing No. 25 dated 07.06.2007 (Annexure P-3) and summoning order dated 30.03.2013 (Annexure P-4) and confines himself to the limited prayer seeking quashing of the order dated 02.04.2014 (Annexure P-8), vide which the petitioners have been declared as 'Proclaimed Offenders' behind their back, especially when the similarly situated co-accused of the petitioners who faced the trial, have already been acquitted by the learned trial Court.

3. Learned counsel for the petitioners *inter alia* contends that on the basis of pre-summoning evidence, the Judicial Magistrate Ist Class, Patiala vide order dated 30.03.2013 (Annexure P-4) summoned both the petitioners to face trial under Sections 406, 420, 34, 120-B of the Indian Penal Code but when the process server went for service of the petitioners, it came to his notice that they both are residing abroad. However, the Judicial Magistrate Ist Class, Rajpura declared both the petitioners as 'Proclaimed Offenders' behind their back when they were not in India vide order dated 02.04.2014. Aggrieved by the said impugned order dated 02.04.2014 (Annexure P-8), the petitioners have approached this Court by way of instant petition.

4. Learned counsel appearing for the petitioners further submits that the petitioners have been declared as 'Proclaimed Offenders' behind their back when they were not in India. He further contends that summons that were issued to the petitioners, received back with the report that they both are residing at Switzerland. It is contended that the impugned order is liable to be set aside on the ground that the mandate of Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial Court.

5. It is also submitted that both the petitioners undertake to appear before the trial Court on each and every date.

6. Learned State counsel opposes the prayer of the petitioners and supports the order passed by the learned trial Court by contending that the petitioners did not put in appearance before the trial Court intentionally and deliberately and, therefore, having left with no other option, proclamation was issued to secure their presence.

7. I have heard learned counsel for the parties and perused the record

of the case with their able assistance and with the consent of parties, the matter is taken up for final disposal.

8. While the scheme of criminal justice system necessitates curtailment of personal liberty to some extent, it is of the utmost importance that the same is done in line with the procedure established by law to maintain a healthy balance between personal liberty of the individual-accused and interests of the society in promoting law and order. Such procedure must be compatible with Article 21 of the Constitution of India i.e. it must be fair, just and not suffer from the vice of arbitrariness or unreasonableness.

9. A perusal of the impugned order reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioners have absconded or is concealing themselves. This Court in the judgment passed in ***Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506*** has held that the Court is first required to record its satisfaction before issuance of process under Section 82 of Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in ***Sonu Vs. State of Haryana 2021 (1) RCR (Crl.) 319***, it has been held that the conditions specified in Section 82 (2) Cr.P.C. for the publication of a proclamation against an absconder are mandatory. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation and proceedings subsequent thereto a nullity.

10. The sole purpose of issuance of non-bailable warrants or issuance of proclamation is to secure presence of the accused before the trial Court. The petitioners in the present case have themselves come forward and have

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undertaken to appear before the trial Court on each and every date.

11. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 02.04.2014 (Annexure P-8) vide which, the petitioners were declared proclaimed offender, is set aside.

12. The petitioners are directed to appear before the trial Court within a period of 02 months from today and on his doing so, they shall be admitted to bail on their furnishing bail bonds and surety bonds to the satisfaction of the trial Court, subject to costs of Rs.10,000/- to be deposited with the Poor Patients Welfare Funds, PGIMER, Chandigarh for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

December 20, 2023
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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |