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

CRM-M-40936-2023

Date of decision: 08.11.2023

RAJVIRPAL SINGH BAINS @ RAJBIR SINGH

....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

....Respondents.

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present: - Mr. Jasraj Singh, Advocate for the petitioner.

Mr. Anmol Singh Sandhu, AAG, Punjab.

Mr. Imran Ahmad Ali, Advocate for respondent No.2.

SANJIV BERRY, J.(ORAL)

The instant petition under Section 482 Cr.P.C. read with Section 483 Cr.P.C. has been filed seeking quashing of order dated 02.07.2007 (Annexure P-7) passed by the learned Judicial Magistrate Ist Class, District Hoshiarpur, vide which the petitioner had been declared as 'proclaimed offender' in case FIR No.163 dated 09.09.2004 (Annexure P-1) registered at P.S. Mahilpur, District Hoshiarpur, for the offences punishable under Section 279 and 304-A of IPC, in view of the fact that the impugned order has been passed in contravention of Section 82 of Cr.P.C. and on account of the fact that the parties have since settled the matter by entering into a

compromise dated 08.05.2023 (Annexure P-9) and it is further prayed that the operation of the impugned order dated 02.07.2007 (Annexure P-7) may be stayed during the pendency of the present petition.

2. It is submitted by learned counsel for the petitioner that in compliance to the order passed by this Court on 21.08.2023, the petitioner has appeared in the trial Court and furnished the requisite bail bonds and since the presence of the petitioner has been procured, therefore, the impugned order dated 02.07.2007 (Annexure P-7) may be set aside.

3. Learned counsel for the State has intimated that the petitioner has appeared in the trial Court and furnished the requisite bail bonds in compliance of the order dated 21.08.2023.

4. Learned counsel appearing on behalf of respondent No.2-complainant has also admitted this fact and pleaded no objection in case the impugned order is quashed.

5. After considering the rival submissions made by learned counsel(s) and perusing the record, it transpires that in the present case, the petitioner had been arrested and released on bail in the aforesaid FIR by the police and after presentation of challan, charge was framed. Thereafter on 29.09.2005, the petitioner absented from the proceedings and was ordered to be served through non bailable warrants of arrest and ultimately proclamation was issued to procure his presence. Finally, vide impugned order dated 02.07.2007 (Annexure P-7), the petitioner was declared as proclaimed offender in the case. It is also pointed out by learned counsel for the petitioner and admitted by learned counsel appearing for the complainant

that a compromise was effected between the parties on 08.05.2023 (Annexure P-9).

6. During the course of hearing following order was passed on 21.08.2023:-

“The present petition under Section 482 Cr.P.C. read with Section 483 Cr.P.C. has been preferred seeking quashing of the order dated 02.07.2007 (Annexure P-7) passed by learned Judicial Magistrate Ist Class, District Hoshiarpur, whereby the petitioner had been declared as proclaimed offender in FIR No.163 dated 09.09.2004 under Sections 279 and 304-A IPC registered at Police Station Mahilpur, District Hoshiarpur.

2. Learned counsel for the petitioner inter alia contends that in the aforesaid FIR, the petitioner after being granted bail, had been regularly appearing and subsequently on account of his absence from the proceedings vide order dated 15.11.2006, proclamation qua him was ordered to be issued for 01.02.2007 with direction to appear within 30 days of proclamation. The proclamation was duly effected on 01.02.2007, however, he has been declared as proclaimed offender vide order dated 02.07.2007 (Annexure P-7), which is in violation of provisions contained in Section 82 of the Code of Criminal Procedure. He further submits that even the compromise dated 08.05.2023 has been effected between the parties, copy of which is placed as Annexure P-9 and as such he prays for quashing of the impugned order Annexure P-7.

3. Notice of motion.

4. *On the asking of the Court, Ms. Swati Batra, DAG, Punjab, who is present in Court accepts notice on behalf of the respondent/State and prays for time to file status report/reply. Mr. Imran Ahmad Ali, Advocate puts in appearance on behalf of respondent No.2 and has filed his Vakalatnama, which is taken on record.*

5. *Status report/reply to the petition be filed on or before the next date of hearing with an advance copy to the counsel opposite.*

6. *List on 08.11.2023.*

7. *In the meanwhile, the petitioner is directed to surrender before the trial Court/Duty Magistrate within two months from today and in that event he is ordered to be released on interim bail to the satisfaction of the concerned Court.”*

7. Now, as per the respective statements made by learned counsel representing the petitioner and complainant as well as State; the compromise dated 08.05.2023 (Annexure P-9) effected between the parties and further the fact that the petitioner had appeared in trial Court and furnished the requisite bail bonds, in compliance to the order dated 21.08.2023 passed by this Court, continuation of the aforesaid order dated 02.07.2007 will serve no purpose. Moreover, it is pertinent to mention here that proclamation for the service of the petitioner was ordered on 15.11.2006 for 01.02.2007 vide Annexure P-4 and on 01.02.2007 since proclamation had been received back effected, notice was issued for 13.04.2007 for recording the statement of serving official vide Annexure P-5 dated 01.02.2007 and then vide order dated 13.04.2007 (Annexure P-6) notice was issued for the service of

serving official for 02.07.2007. Thereafter, vide the impugned order dated 02.07.2007 (Annexure P-7) the petitioner was declared as proclaimed offender in this case.

8. From the perusal of these zimni orders further reveal that the learned Judicial Magistrate Ist Class, Hoshiarpur, while declaring the petitioner as proclaimed offender in this case has not even followed the procedure as laid down under Section 82 Cr.P.C. It is also evident therefrom that there was no proclamation for the appearance of the petitioner for 02.07.2007 when vide aforesaid impugned order the petitioner had been declared as proclaimed offender by learned Magistrate. Therefore, it transpires that the learned Magistrate had not adhered to the provisions contained in Section 82 Cr.PC and on this score also the impugned order dated 02.07.2007 (Annexure P-7) passed by learned Judicial Judicial Magistrate Ist Class, Hoshiarpur, is hereby set aside.

9. Petition stands disposed of.

(SANJIV BERRY)
JUDGE

08.11.2023
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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |