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

**CRM-M No. 45781 of 2023
Date of Decision: 16.11.2023**

SHAMSHER SINGH

... Petitioner

Versus

STATE OF HARYANA & OTHERS

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Vivek Goel, Advocate
for the petitioner.

Mr. Vishal Malik, DAG, Haryana.

Mr. Kapil Gupta, Advocate
for respondent No.2.

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SANJIV BERRY, J. (ORAL)

Instant petition under Section 482 Cr.P.C. has been preferred by the petitioner seeking quashing of order dated 03.07.2023 (Annexure P-13) passed by Judicial Magistrate Ist Class, Kaithal, whereby the petitioner was declared as proclaimed person in case FIR No.21 dated 26.02.2014 under Sections 323, 452, 506, 325, 34 of IPC (Section 34 of IPC has been deleted) registered at P.S. Dhand, District Kaithal (Annexure P-1).

2. The case was listed on 20.09.2023 and following orders were passed:-

“Instant petition under Section 482 Cr.P.C. has been preferred by the petitioner seeking quashing of order dated 03.07.2023 passed by Judicial Magistrate Ist Class, Kaithal, whereby the

petitioner was declared as proclaimed person in case FIR No.21 dated 26.02.2014 under Sections 323, 452, 506, 325, 34 of IPC (Section 34 of IPC has been deleted) registered at P.S. Dhand, District Kaithal (Annexure P-1).

2. It is, inter alia, contended by learned counsel for the petitioner that the aforesaid FIR was registered at the instance of respondent No.2 and after conclusion of investigation, challan was presented in Court only against accused Dharampal, whereas the petitioner was kept in column No.2 after being declared innocent. Learned counsel for the petitioner further submits that during the course of proceedings, the learned trial Court on the basis of the application under Section 319 Cr.P.C. had summoned the petitioner as additional accused in the case. As per learned counsel for the petitioner, the petitioner has been living abroad for last more than 20 years and during this period, he never came in India, but the learned trial Court issued process for procuring his presence as is evident from orders Annexure P-3 to P-12. He further submits that it is evident from Annexure P-3 itself that it was reported that the petitioner is residing in Germany, despite that the non-bailable warrants and proclamation have been issued at the village address of the petitioner whereas the fact remains that the petitioner never came to India during this period and on the basis thereof vide impugned order Annexure P-13, the petitioner has been declared as proclaimed person without following the provisions contained in Section 82 Cr.P.C. in accordance with law.

3. Notice of motion.

4. On the asking of the Court, Ms. Gaganpreet Kaur, DAG, Haryana, accepts notice on behalf of the respondent No.1-State and Ms. Shefali Bhatia, Advocate has put in appearance on behalf of respondents No.2 and 3 by filing power of attorney,

which is taken on record.

5. Reply, if any, be filed well before the next date of hearing with an advance copy to the counsel opposite.

6. In the meanwhile, the petitioners are directed to appear in the trial Court on or before 10.10.2023 and in the event of the arrest of the petitioner, he shall be released on interim bail on his furnishing personal/surety bonds to the satisfaction of the Arresting Officer/Investigating Officer. He shall also abide by conditions as envisaged under Section 438(2) Cr.P.C.

7. Adjourned to 17.10.2023.”

3. Learned counsel for the petitioner submits that in compliance of the order dated 20.09.2023 passed by this Court, the petitioner had surrendered on 10.10.2023 and furnished regular bail bonds and as such, it is submitted that the impugned order dated 03.07.2023 (Annexure P-13) passed by Judicial Magistrate Ist Class, Kaithal, whereby the petitioner was declared as proclaimed person be set aside.

4. Learned State counsel as well as counsel for respondent admitted the fact that the petitioner had surrendered in compliance to the order dated 20.09.2023 and furnished the requisite bail bonds.

5. Since, it is evident from documents that the petitioner had been residing abroad and was not in India at the relevant time when the proclamation was issued and impugned order dated 03.07.2023 (Annexure P-13) had been passed by learned Magistrate declaring him as proclaimed person, the provisions of Section 82 Cr.P.C had not been strictly followed by the learned Magistrate. Moreover, in pursuance to the interim order (supra) passed on 20.09.2023 the petitioner had already surrendered in the

trial Court and furnished the bail bonds. Therefore, continuation of the impugned order dated 03.07.2023 (Annexure P-13) passed by Judicial Magistrate Ist Class, Kaithal will be nothing but abuse of process of law. Since, the petitioner had surrendered on 10.10.2023 in the trial Court, and the impugned order dated 03.07.2023 (Annexure P-13) being suffered from violation of the strict compliance of Section 82 Cr.P.C., the same is hereby set aside.

6. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

(SANJIV BERRY)
JUDGE

16.11.2023
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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |