

226-2

2023:PHHC:079017

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-53644-2022

Date of decision: 30.05.2023

Gurpreet Sahota

....Petitioner.

Versus

State of Punjab and another

....Respondents.

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Mr. Sahil Soi, Advocate, for the petitioner.

Mr. Mohit Thakur, AAG, Punjab.

Ms.Manpreet, Advocate, for respondent No. 2.

.....

SANJIV BERRY, J.

1. This is a petition filed under Section 482 of the Code of Criminal Procedure, 1973, for quashing of the order dated 21.10.2016 (Annexure P-3), passed in case FIR No. 162 dated 08.06.2013 under Sections 323, 325, 452, 148 and 149 of IPC, registered at Police Station City Nakodar, District Jalandhar City, now Jalandhar Rural, (Annexure P-1) whereby the petitioner was declared as proclaimed person.

2. Learned counsel for the petitioner, *inter alia*, contends that petitioner had been declared as proclaimed offender without following the provisions laid down by law and the impugned order dated 21.10.2016 (Annexure P-3), passed by learned Sub Divisional Judicial Magistrate, Nakodar, is not in consonance with the provisions contained under the provisions of Section 82 of the Cr. P.C. As such, he has sought quashing of the aforesaid impugned order (Annexure P-3). He further contends that

CRM-M-53644-2022

-2-

even on the basis of the compromise, FIR in question and the consequent proceedings therein against the petitioner, has already been quashed by this Court vide order of even date i.e. 30.05.2023 in **CRM-M-53618-2022** (**Gurpreet Sahota vs. State of Punjab and another**).

3. In support of his contention, learned counsel for the petitioner has referred to a judgment of the Division Bench of this Court in **Sudo Mandal @ Diwarak Mandal vs. State of Punjab**, (2011) 2 RCR (Crl.) 453.

4. Learned State counsel has opposed the request by submitting that no ground is made out to quash the impugned order. However, at the same time, he admitted the fact that FIR (Annexure P-1) has since been quashed qua the petitioner on the basis of compromise effected between the parties.

5. After considering the rival contention and perusing the record, it is evident that vide impugned order dated 21.10.2016 (Annexure P-3), learned Sub Divisional Judicial Magistrate, Nakodar, had declared the present petitioner-Gurpreet Sahota to be an absconder. Relevant part of the order dated 21.10.2016 reads as under: -

'Today, case was fixed for awaiting appearance of accused Gurpreet after proclamation effected on 15.09.2016. Accused has failed to appear today. Statutory period of 30 days for awaiting appearance of accused Gurpreet has elapsed. This Court has further reasons to believe that accused is deliberately absconding the proceedings of this case. There is no immediate prospect of the accused to appear in the Court and to stand by the trial in near future. In view of the facts

CRM-M-53644-2022

-3-

mentioned above, it is befitting that accused Gurpreet be declared absconder. Therefore, accused is hereby declared as absconder.

Intimation regarding declaring the accused as absconder be sent to concerned police station.'

6. Further, perusal of the order dated 09.09.2016, (Annexure P-2), passed by learned Sub Divisional Judicial Magistrate, Nakodar, i.e. proclamation under Section 82 Cr. P.C., would reveal that the same was issued on 09.09.2016, requiring the presence of the petitioner for 29.09.2016 i.e. the period less than 30 days. Section 82 (1) of Cr.P.C., reads as under: -

'82 (1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation'.

7. Therefore, reading the order of proclamation dated 09.09.2016 (Annexure P-2), clearly shows that specified period of 30 days has not been given from the date of publishing such proclamation. Therefore, such proclamation itself is in violation of the provisions contained in Section 82 Cr. P.C and is not sustainable in the eyes of law.

8. Even otherwise, it is worth mentioning that vide order of even date passed in **CRM-M-53618-2022**, FIR No. 162 dated 08.06.2013 (Annexure P-1) along with consequential proceedings have been quashed qua the petitioner-Gurpreet Sahota, on the basis of compromise effected between the parties.

9. In light of the above facts and circumstances, finding merit in the present petition, the same is allowed and the impugned order dated 21.10.2016 (Annexure P-1) is hereby set aside.

30.05.2023
preeti

(SANJIV BERRY)
JUDGE

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