

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

CRM-M No.57428 of 2023

Date of Decision:16.11.2023

Sanjay Munjal

...Petitioner

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Nikhil Chopra, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court under Section 482 Cr.P.C. for quashing of the order dated 02.01.2017 (Annexure P-5) passed by the Judicial Magistrate 1st Class, Ludhiana in CHI No.49011/13 whereby the petitioner has been declared a proclaimed offender.

2. Learned counsel appearing for the petitioner, *inter alia*, contends that FIR No.235 dated 13.12.2010 under Sections 420, 467, 468, 471, 120-B IPC was registered at Police Station Salem Tabri, District Ludhiana City at the instance of the complainant on the ground that Kamal and Baljit approached him to purchase a property measuring 130 sq. yards, power of attorney of which property was with the petitioner. The complainant sold the said property, which was found to be mortgaged with the bank, however, at the time of execution of the sale deed it was projected by the accused persons that the property is free from all encumbrances. The petitioner is in USA since 10.02.2016 and in his absence vide order dated 23.09.2016, the trial court issued proclamation of the petitioner for

18.10.2016. The case was adjourned to 25.11.2016 and further adjourned to 02.01.2017 for awaiting appearance of the petitioner. On 02.01.2017, the petitioner was declared a proclaimed offender.

3. Learned counsel appearing for the petitioner submits that the impugned order is liable to be set aside on the ground that the mandate of Section 82 Cr.P.C. has not been followed in its letter and spirit by the trial Court. It is contended that the proclamation issued to the petitioner was not executed, as the petitioner was not present in India at the relevant point in time when the impugned order was passed by the trial Court while observing that proclamation has been duly executed qua petitioner on 24.11.2016. Neither the proclamation was published at the place where the petitioner ordinarily resides nor was it read publicly in some conspicuous place of the town or village in which the accused ordinarily resides. It is further contended that the matter has already been compromised between the parties, which factum has been recorded by the trial Court in its various orders. The absence of the petitioner was neither intentional nor willful but was only due to the fact that he was abroad at the relevant point of time. It is also contended that vide judgment dated 03.01.2018, the co-accused namely Jagjit Singh passed by the Judicial Magistrate 1st Class, Ludhiana has been acquitted and thus, on the same set of allegations, continuation of proceedings against the petitioner will be a futile exercise. In support of his arguments, counsel for the petitioner relies upon the judgment passed by this Court in *Sonu vs. State of Haryana 2021 (1) RCR (Cri.) 319* and *Sunil Kumar Vs. State 2002 (1) RCR (Crl.) 119*. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

4. Notice of motion.

5. Ms. Navreet Kaur, AAG, Punjab, who is present in Court, accepts notice for the respondent and supports the order passed by the trial Court by contending that the petitioner 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 his presence.

6. I have heard learned counsel for the parties and perused the record of the case with their able assistance. The case is taken up for final disposal with the consent of both parties.

7. 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.

8. Admittedly, the petitioner was not in India at the relevant point of time when the proclamation was issued and execution of the same was undertaken and therefore, the execution of the proclamation cannot be said to be a valid execution. A perusal of the impugned order reveals that the trial Court has issued proclamation without recording reasons of its belief that the petitioner has absconded or is concealing himself. 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 and non-recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in ***Sonu's case*** (supra), 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.

9. 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 petitioner in the present case has himself come forward and has undertaken to appear before the trial Court on each and every date.

10. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 02.01.2017 (Annexure P-5) vide which the petitioner was declared proclaimed offender is set aside. The petitioner is directed to appear before the trial Court on or before 30.11.2023 and on his doing so, he shall be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of ₹10,000/- to be deposited with the District Legal Services Authority, Ludhiana for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

November 16, 2023
reena/Pankaj*

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