

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

CRM-M-58745-2023
Date of decision: 21.11.2023

Lakhvir Singh

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sukhdeep Singh Bhinder, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of impugned order dated 11.11.2022 (Annexure P-5) passed by the learned Judicial Magistrate 1st Class, Jalandhar, in a complaint case bearing No. CIS No. CHI-275-2022 titled as 'Punjab State Vs. Lakhvir Singh' whereby, the petitioner was declared as proclaimed person in a case bearing FIR No.0098 dated 01.07.2021 under Sections 279/337/338/427 of IPC registered at Police Station Mehatpur, district Jalandhar Rural.

2. Brief facts of the case are that on 22.02.2018, the complainant along with his friend Gurpreet were riding on one motorcycle. Father of the complainant and his sister were riding on another motorcycle and when they reached near village Mangoval Mehatpur then one car bearing No. PB-10-EF-6305 was coming in a high speed and negligent manner and hit the complainant's motorcycle due to which complainant and his friend-Gurpreet suffered injuries. Complainant was admitted in DMC Hospital where he was treated and rods were put in both of his legs. It is further alleged that the

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complainant on his own enquiry came to know the name of the driver of the above said car is, Lakhvir Singh, the present petitioner. Thereafter, the complainant filed a petition under Section 166 of the Motor Vehicles Act, 1988 for grant of compensation against the present petitioner and others and the same was allowed in favour of the petitioner on 29.04.2021 (Annexure P-2), wherein, compensation to the tune of Rs.6,07,600/- was granted along with interest along with interest @ 7% per annum from the date of filing of the claim petition.

3. Learned counsel appearing for the petitioner, *inter alia*, contends that there was no criminal case pending against the petitioner and thus, he left the country on 21.10.2018 i.e. much prior to the registration of instant FIR. Thereafter, petitioner came to India on 13.01.2021 and again left on 26.03.2021. He never came back to India and residing in Canada being permanent resident of Canada. Thereafter, proclamation was issued against the petitioner and the serving official pasted the proclamation notice on 09.10.2022 at wrong address of the petitioner i.e. Lakhi Colony, Barnala and also recorded the statement of M.C. of the said area in which she had stated that earlier the petitioner used to reside there but since long he is not residing there. On 11.11.2022 (Annexure P-5) the petitioner did not appear before the learned Judicial Magistrate 1st Class, Jalandhar and the trial Court declared the petitioner proclaimed person and ordered to register FIR against him under Section 174-A IPC and further to attach the list of his movable/immovable property. Aggrieved by the said impugned order dated 11.11.2022 (Annexure P-5), the petitioner has approached this Court by way of instant petition.

4. Learned counsel appearing for the petitioner submits that the impugned order is liable to be set aside on the ground that the mandate of

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Section 82 Cr.P.C. has not been followed in its letter and spirit by the trial Court. First of all, in the eventuality of non-appearance of the petitioner, the Court ought to have issued warrants to secure his presence and thereafter, issued the proclamation by recording reasons on the basis of which it believed that the person against whom the warrant issued, has absconded or concealed himself to avoid execution of warrant. However, in the present case, without making an attempt to secure presence of the petitioner by issuing warrants, proclamation was issued for 11.11.2022, on which date, ultimately, the petitioner was declared a proclaimed person. It is further contended that even the proclamation issued was not executed, as the petitioner was not served with proclamation. The statement of M.C. of the said area is also annexed with the petition in which she had stated that earlier the petitioner used to reside there but since long he is not residing at the given address. The executing officer pasted a copy of the proclamation at the wrong address. It is also contended that the pasting of proclamation by the executing officer on the wrong address, despite being made aware by the statement given by M.C. of the said area, cannot be considered to be a valid execution of the proclamation. 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 the judgment passed by the Gujarat High Court in *Govindbhai Patel Vs. State of Gujarat 2004 (4) RCR (Criminal) 830*. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

5. Notice of motion.

6. Ms. Navreet Kaur Barnala, AAG, Punjab who is present in Court, accepts notice for respondent No.1 and supports the order passed by the learned

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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.

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. As far as possible, presence of the accused in the eventuality of his non-appearance ought to be secured by issuing summons or bailable warrants and non-bailable warrants/proclamation should not generally be issued. A perusal of the impugned order reveals that the trial Court without issuing summons or bailable warrants straightway issued proclamation, much less, 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 prior

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issuance of warrant of arrest by the Court is *sine qua non* for issuance and publication of the proclamation and the Court has to first issue warrant of arrest against the person concerned. 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 petitioner in the present case has himself come forward and has 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, without issuing notice to the respondent No.2 in order to save time of the Court and to avoid litigation expenses to be incurred on the part of respondent No.2, the impugned order dated 11.11.2022 (Annexure P-5) vide which the petitioner was declared proclaimed person is set aside.

12. The petitioner is directed to appear before the trial Court within a period of 15 days from the date of receipt of certified copy of this order 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 Rs.10,000/- to be deposited with the District Legal Services Authority, Jalandhar, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

21.11.2023

Neha Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No