

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

CRM-M-58680-2023
Date of decision: 22.11.2023

Rohit SharmaPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gobind Rai Sharma, Advocate
for the petitioner.

Ms. Navreet Kaur Barnala, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of impugned order dated 29.08.2023 (Annexure P-14) passed by the learned Chief Judicial Magistrate, Moga vide which the petitioner was declared as proclaimed person in a case bearing FIR No.31 dated 07.02.2007 under Sections 406/420 of IPC registered at Police Station City Moga, District Moga (Annexure P-1).

2. Brief facts of the case are that the petitioner along with co-accused had induced the complainant into parting with Rs.3 lakhs on the pretext of sending him abroad and the said payment was received in the year 1998 and the total deal was for Rs.8 lakhs and thus, the present FIR was got registered.

3. Learned counsel appearing for the petitioner *inter alia* contends that the petitioner approached this Court by filing CRM-M No.46433 of 2021 for quashing of proclamation order dated 26.11.2007 and this Court vide order dated 03.11.2021, was pleased to set aside the P.O. order and directed the

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petitioner to appear on 06.11.2021 before the learned Duty Magistrate/Chief Judicial Magistrate/Trial Court and on his appearance on 06.11.2021, the concerned learned Duty Magistrate/Chief Judicial Magistrate/Trial Court was directed to release the petitioner on bail subject to furnishing bail bonds/surety bonds to its satisfaction and the petitioner was further directed to deposit an amount of Rs.20,000/- in the High Court Lawyers' Welfare Funds, Chandigarh, within a period of one week and also made clear that in case, the petitioner does not appear on 06.11.2021 or does not deposit the above said amount within the period as stated above, then the present petition would be deemed to have been dismissed. He further contends that the petitioner was regularly appearing before the learned trial Court, Moga, on each and every date of hearing and thereafter, the matter was got compromised between the parties vide order dated 06.01.2023 (Annexure P-5) passed by the learned Chief Judicial Magistrate, Moga. In furtherance of the compromise, the accused/petitioner also made a demand draft bearing No.625106 dated 09.11.2023 amounting to Rs.75,000/- in favour of the complainant-Puran Singh (Annexure P-6). Thereafter, the petitioner moved an application for exemption from personal appearance but the same was declined vide order dated 10.04.2023 (Annexure P-7) and bailable warrants in the sum of Rs.5,000/- with one surety in the like amount were issued against the petitioner for 17.04.2023. Thereafter, on 17.04.2023, the petitioner again moved an application for exemption from personal appearance and the same was also declined by the learned trial Court. On 17.04.2023, non-bailable warrants of arrest were issued against the petitioner for 11.05.2023. On 08.05.2023, the petitioner met with an accident and his right leg got fractured in that accident on the basis of which, he again moved an application for

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exemption from personal appearance before the trial Court along with medical certificate, however, the same was not considered. On 11.05.2023 and 02.06.2023, non-bailable warrants against the petitioner were repeatedly issued and the case was fixed for 15.07.2023. On 15.07.2023, the petitioner was summoned through proclamation warrants under Section 82 of Cr.P.C. for 11.08.2023. On 29.08.2023, the petitioner was declared as proclaimed person and Collector Report with regard to the property of the accused/petitioner was called under Section 83 of Cr.P.C. for 07.10.2023. Aggrieved by the said impugned order dated 29.08.2023 (Annexure P-14), the petitioner has approached this Court by way of instant petition.

4. Learned counsel appearing for the petitioner submits that the bailable warrants issued to the petitioner were never served and, therefore, the finding of the trial Court that the petitioner is intentionally concealing, is erroneous. Further, the trial Court vide orders dated 11.05.2023 and 02.06.2023 observed that since non-bailable warrants have been received back unexecuted, the proclamation warrant under Section 82 Cr.P.C. was issued for 11.08.2023. Ultimately, vide impugned order dated 29.08.2023, the petitioner has been declared as proclaimed person. It is contended that the impugned order is liable to be set aside on the ground that the mandate of Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial Court.

5. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

6. Notice of motion.

7. Ms. Navreet Kaur Barnala, AAG, Punjab who is present in Court,

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accepts notice for the respondent and supports the order passed by the learned 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 against him to secure his presence.

8. However, learned State counsel very fairly concedes that the matter between the parties has been compromised. The learned trial Court has recorded the statement of the complainant to the effect that the complainant had entered into compromise with the accused/petitioner vide order dated 06.01.2023 (Annexure P-5).

9. 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.

10. 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.

11. A perusal of the impugned order reveals that the trial Court 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

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satisfaction before issuance of process under Section 82 of Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in *Sonu Vs. State of Haryana* **2021 (1) RCR (Crl.) 319**, 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 as nullity. Since the impugned order dated 29.08.2023 (Annexure P-14) suffers from incurable illegality, the same would not have any force of law.

12. In view of the aforesaid facts and circumstances, the present petition is allowed, and the impugned order dated 29.08.2023 (Annexure P-14) vide which the petitioner was declared proclaimed person is set aside.

13. The petitioner is directed to appear before the trial Court within a period of 15 days from today 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.20,000/- to be deposited with the District Legal Services Authority, Moga, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

22.11.2023

Neha

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