

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

122.

CRM-M No.58882 of 2023

Date of Decision:22.11.2023

Bharat Yadav

...Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.K. Tripathi, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court under Section 482 Cr.P.C. seeking quashing of impugned order dated 21.08.2023 (Annexure P-3) passed by the learned Judicial Magistrate Class 1st Class, Mohindergarh in NACT No.318 dated 30.10.2018 titled as *Yogesh Kumar Vs. Bharat Yadav* whereby the petitioner has been declared proclaimed person.

2. Learned counsel appearing for the petitioner, *inter alia*, contends that a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the NI Act) was filed against the petitioner in which he has been declared proclaimed person without following the mandate of Section 82 Cr.P.C. It is further contended that the petitioner was never served the summons or the proclamation issued by the trial Court, as the impugned order does not indicate that the petitioner was served by the executing official or publication notice was issued in any local newspaper. The petitioner has already been disowned by his grandmother and he was not residing with her. It

is also contended that the petitioner is ready and willing to join proceedings before the trial Court and undertakes to appear on each and every date.

3. Per contra, Ms. Navreet Kaur Barnala, AAG, Punjab supports the impugned 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. When the petitioner did not turn up despite execution of proclamation, he was declared a proclaimed person and proceedings under Section 174A IPC were initiated against him.

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

5. 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.

6. A perusal of the zimni orders (Annexure P-1) reveals that though notice issued through registered AD was delivered on 24.12.2018 but was not received back served or otherwise and since the petitioner did not appear, warrants of arrest were issued, which remained unexecuted and ultimately, proclamation was issued for securing his presence. A perusal of the impugned order dated 21.08.2023 does not indicate that the petitioner was served by the executing official or the proclamation was publicly read in the area of

residence of the petitioner. The petitioner has already been disowned by his grandmother. Furthermore, a perusal of zimni order dated 28.01.2019 reveals that notice issued to the petitioner through registered AD was not received back in any manner. Even the warrants of arrest remained unexecuted. 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 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 (Cri.) 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. Once the impugned order passed under Section 82 Cr.P.C. is found to be suffering from incurable illegality, the proceedings initiated under Section 174A IPC would not survive either.

7. 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.

8. In view of the aforesaid facts and circumstances, the impugned order dated 21.08.2023 (Annexure P-3) vide which the petitioner was declared proclaimed person is set aside. The petitioner is directed to appear before the trial Court on or before 04.12.2023 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, Mohindergarh for wasting precious time of the Court.

9. The instant petition is allowed in above terms, without issuing notice to respondent No.2 to save the time of the Court and to avoid litigation expenses to be incurred on the part of respondent No.2.

(HARPREET SINGH BRAR)
JUDGE

November 22, 2023

Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No