

CRM-M-61970-2023
Date of decision: 11.12.2023

Versus

Satnam Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jasmeet Singh Ghumman, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing/setting aside of impugned order dated 23.11.2015 (Annexure P-3) in a complaint case registered as SC 35 of 2016 dated 30.01.2016 under Sections 307/326/324/34 of IPC (Anneuxre P-1).

2. Learned counsel appearing for the petitioner, *inter alia*, contends that a complaint was filed on 07.06.2010 by the complainant-Satnam Singh stating that the petitioner along with other co-accused had caused injuries to the complainant on 27.09.2009. The learned Judicial Magistrate 1st Class, Phillaur summoned the accused persons, namely, Bahilar Singh, Balvir Singh and Tirath Singh (the present petitioner) under Sections 307/326/324/34 of IPC vide its order dated 26.02.2015. In pursuance to the said summoning order, accused-Balihar Singh and Balvir Singh appeared before the learned Illaqa Magistrate but petitioner-Tirath Singh could not appear as he had left India on 15.10.2014.

On 10.08.2015, the learned trial Court issued notice to the petitioner through

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RC/AD for 31.08.2015. The publication was issued in the newspaper on 13.10.2015 asking the petitioner to appear before the trial Court on or before 23.10.2015. On 23.11.2015, the petitioner could not put in appearance as neither the notice nor the proclamation was served upon him and the trial Court declared the petitioner as proclaimed person. Aggrieved by the said impugned order dated 23.11.2015 (Annexure P-3), the petitioner has approached this Court by way of instant petition.

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. 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 on 05.10.2015 and on 23.11.2015, ultimately, the petitioner was declared a proclaimed person. It is further contended the trial Court in its order dated 10.08.2015 had itself observed that notice issued to the petitioner through RC/AD was received back with the report of 'abroad' and yet issued proclamation which was not executed, as the petitioner was not served with proclamation. It is further submitted that it is a settled law that when the accused is residing in a foreign country, attempt is to be made to serve summons upon him through the Ministry of External Affairs and in the present case, no such attempt has been made. Counsel for the petitioner also relied upon the

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instructions issued by the Government of India for service of summons/proclamation orders on the accused which is attached with the present petition as Annexure P-5. 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 further submitted that the petitioner undertakes to appear before the trial Court on each and every date and also the petitioner has entered into a compromise with the complainant/respondent, in proof of which, a compromise dated 02.09.2023 (Annexure P-6) is annexed with the present petition.

4. Notice of motion.

5. Mr. Armaan Gagneja, Advocate puts in appearance and filed power of attorney on behalf of the respondent in the Court today which is taken on record. Registry is directed to tag the same at an appropriate place in the file.

6. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

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. 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

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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 straight away 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 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.

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 and the impugned order dated 23.11.2015 (Annexure P-3) vide which the petitioner was declared proclaimed person is hereby set aside.

The petitioner is directed to appear before the trial Court within a period of four weeks from today and on his doing so, he shall be admitted to bail on his

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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 Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

11.12.2023
Neha

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