

122 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-62442-2023(O&M)

Date of Decision: 20.12.2023

SURESH KUMAR

...Petitioner

V/S

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Divyam Singh, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. The petitioner has approached this Court under Section 482 Cr.P.C. praying for quashing of order dated 05.05.2022 (Annexure P-20) alongwith the consequential proceedings vide which the petitioner has been declared as proclaimed person in complaint case bearing COMA 361 of 2016 titled as **Reliance Capital Limited Vs. Suresh Kumar and Another** dated 29.09.2016 (Annexure P-1).

2. Learned counsel for the petitioner inter alia contends that in the aforesaid complaint case, notice was issued to the petitioner and the summons could not be served upon him, based upon which bailable warrants were issued, which were also received back unexecuted and vide order dated 31.07.2017 and thereafter non-bailable warrants were issued against the petitioner for 18.09.2017. Thereafter on 18.09.2017, when matter was taken up, non-bailable warrants were not issued and thereafter the same were received back as unexecuted on 01.03.2018. On 10.04.2018, when the matter was taken up, the non bailable warrants were received back

unexecuted. Then fresh non-bailable warrants were issued and the matter got adjourned. The matter was taken up on several dates and despite issuing bailable warrants on every occasion the same were received back unexecuted. Ultimately, vide order dated 05.05.2022, the petitioner has been ordered to be declared as a proclaimed person and proceedings under Section 174-A IPC were initiated against him. It is further contended that non-appearance of the petitioner before the learned trial Court was neither intentional nor willful and the petitioner has not been served even once and also the address as mentioned in the complaint is incorrect and incomplete, hence the proceedings against him are liable to be set aside. The petitioner is ready to join proceedings and undertakes to be remained present on each and every date of hearing.

3. I have heard learned counsel for the petitioner and perused the record of the case with his able assistance.

4. 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.

5. 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

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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 in nature. 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 an incurable illegality, the order vide which the proclamation was issued would be liable to be set aside.

6. 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.

7. In view of the aforesaid facts and circumstances, the impugned order dated 05.05.2022 (Annexure P-20) vide which the petitioner was declared proclaimed person is set aside. The petitioner is directed to appear before the trial Court within four weeks 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, Karnal, for wasting precious time of the Court.

8. The instant petition stands disposed of in above terms.

(HARPREET SINGH BRAR)
JUDGE

20.12.2023

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No