

123 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-63638-2023 (O&M)

Date of Decision: 19.12.2023

RAMINDER SINGH @ RAVI

...Petitioner

V/S

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ankit Kharbanda, Advocate
for the petitioner.

Mr. I.P.S. Sabharwal, DAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed under Section 482 of Cr.P.C. seeking quashing of the complaint bearing No. 281 of 2001 dated 28.04.2001 (Annexure P-2) under Sections 452, 323, 325, 294-A, 148 and 149 of the Indian Penal Code preferred by respondent No. 2 against the petitioner, as well as the summoning order dated 14.07.2008 passed by the Court of learned Judicial Magistrate Ist Class, Amritsar in the above complaint and all subsequent proceedings arising therefrom including the order dated 18.09.2010 (Annexure P-4) passed by the Court of learned Chief Judicial Magistrate, Amritsar, whereby the petitioner has been declared as 'Proclaimed Offender'.

2. Learned counsel for the petitioner wishes to withdraw his prayer with regard to quashing of the complaint bearing No. 281 of 2001 dated 28.04.2001 (Annexure P-2) and summoning order dated 14.07.2008 (Annexure P-3) and confines himself to the limited prayer seeking quashing of the order dated 18.09.2010 (Annexure P-4), vide which the petitioner has been declared as 'Proclaimed Offender' behind his back, especially when the similarly situated co-accused of the

trial Court.

2. Brief facts of the case, as per the prosecution are that on 17.06.1998, the petitioner along with other co-accused forcibly entered into the house of respondent No. 2, inflicted injuries upon him and thereafter on alarm being raised by him, all the accused persons fled away from the spot criminally intimidating him. Vide order dated 14.07.2008, learned Judicial Magistrate Ist Class, Amritsar summoned the petitioner along with other co-accused to face trial under Sections 452, 323, 325, 148 and 149 of Indian Penal Code. The petitioner was about 26 years of age at that point of time, got an opportunity to go abroad to earn his livelihood and with a view to secure his future, he had gone to England in the month of April 2007 and was in India on vacation from 18.06.2008 till 06.07.2008, however, he was been declared as 'Proclaimed Offender' behind his back when he was not in India, vide order dated 18.09.2010 by the Court of learned Chief Judicial Magistrate, Amritsar. Aggrieved by the said impugned order dated 18.09.2010 (Annexure P-4), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the petitioner has been declared as 'Proclaimed Offender' behind his back when he was not in India. He further contends that summon was served to the mother of the petitioner and it was informed that petitioner has already left for England and is not residing at the present place. 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.

It is also submitted that the petitioner undertakes to appear

before the trial Court on each and every date.

5. Notice of motion.

6. Mr. I.P.S. Sabharwal, DAG Punjab, who is present in Court, accepts notice for respondent No.1 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 to secure her 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. 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 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 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 18.09.2010 (Annexure P-4) vide which the petitioner was declared proclaimed offender is set aside.

12. The petitioner is directed to appear before the trial Court within a period of 03 months 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 Poor Patients Welfare Funds, PGIMER, Chandigarh for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

19.12.2023
Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No