

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-4187 of 2024
Date of Decision: January 29, 2024

Rohit

.....Petitioner

versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Manoj Kumar Taya, Advocate
for the petitioner

Ms. Geeta Sharma, DAG Haryana

Ms. Jasleen Kaur, Advocate
for respondent No. 2

Harpreet Singh Brar, J. (Oral)

1. The prayer in the present petition under Section 482 Cr.P.C. is for quashing of order dated 07.08.2019 (Annexure P-8) alongwith consequential proceedings whereby the petitioner has been declared proclaimed person in Criminal appeal bearing CIS No. 633-2017 titled as *Rohit vs. State of Haryana* filed by the petitioner against judgment of conviction dated 01.11.2017 (Annexure P-3) and order of sentence dated 06.11.2017 (Annexure P-4) emanating from FIR No. 980 dated 25.10.2015 under Sections 323, 34 and 506 of Indian Penal Code registered at Police Station Karnal City, District Karnal on the basis of compromise dated 11.01.2024 (Annexure P-5).
2. Learned counsel for the petitioner *inter alia* contends that the FIR(supra) was lodged against the petitioner and two other unknown persons.

The police conducted the investigation and added Section 325 IPC in the case and presented the challan against the petitioner only. Thereafter, the petitioner was convicted for commission of offence under Sections 323, 325 and 506 IPC vide judgment dated 01.11.2017. The petitioner filed an appeal against the said order. He further submits that with the intervention of respectables the parties arrived at a mutual compromise in the month of May, 2018. Thereafter, the petitioner went abroad and due to COVID-19 pandemic he could not return back within time. Consequently, learned Additional Sessions Judge, Karnal (Appellate Court) declared the petitioner as proclaimed person vide order dated 07.08.2019 and the appeal was ordered to be consigned to the record room vide order dated 19.08.2021.

3. Learned counsel appearing for the petitioner submits that the non-appearance of the petitioner was not deliberate and intentional and thus, aggrieved by the said order, he has approached this Court by way of instant petition. It is contended that the impugned order is liable to be set aside on the ground of unintentional non-appearance of the petitioner due to unavoidable circumstances.

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

5. Notice of motion.

6. Ms. Geeta Sharma, DAG Haryana, who is present in Court, accepts notice for the respondent and submits that the impugned order has been passed on the sole ground of the absence of the petitioner, however, it is not disputed by her that the parties have compromised the matter.

7. Ms. Jasleen Kaur, Advocate puts in appearance on behalf of respondent No. 2 and admits the factum of compromise effected between the parties.

8. 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.

9. 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.

10. 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 in nature. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation as nullity.

11. 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

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petitioner in the present case has herself come forward and has undertaken to appear before the trial Court on each and every date.

12. In view of the aforesaid facts and circumstances, the impugned order dated 07.08.2019 (Annexure P-8) vide which the petitioner was declared proclaimed person is set aside. The petitioner is directed to appear before the appellate Court within a period of four weeks 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.10,000/- to be deposited with the District Legal Services Authority, Karnal, for wasting precious time of the Court.

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

(HARPREET SINGH BRAR)
JUDGE

January 29, 2024

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No