



**221-2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-6033-2019 (O & M)
Date of decision: 07.11.2024**

BALDEEP SINGH @ BALDEEP SIDHU

...PETITIONER

V/S

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sukhbir Mandi, Advocate for the petitioner.

Ms. Ramta Chowdhary, DAG, Punjab.

Mr. H.S. Thiara, Advocate for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner through instant petition is seeking quashing of FIR No.38 dated 25.03.2001 registered at Police Station Phillaur, District Jalandhar (Annexure P-1) under Sections 452, 354, 323, 148 and 149 IPC on the basis of compromise arrived at between the parties. The petitioner is further seeking quashing of order dated 15.05.2006 (Annexure P-6) whereby Ld. Sub Divisional Judicial Magistrate, Phillaur has declared the petitioner as proclaimed offender.

2. On 30.05.2023, learned counsel for the petitioner confined his prayer to the extent of setting aside the order dated 15.05.2006 whereby the petitioner has been declared proclaimed offender.

3. Brief facts of the case as alleged are that the present case was registered on an application moved by respondent No.2-Harjinder Singh, who stated that on 28.03.2001, when he went to Gurudwara Sahib for paying obeisance and thereafter, he went to his house, the petitioner and co-accused



Gurinder Singh met him at the main gate of Gurdwara Sahib and when the complainant entered in his house, the petitioner also entered into his house with intention to kill him and gave him fist blows and pulled out a knife from his dub but on hearing raulla, the parents of the complainant came there, upon which petitioner ran away after laying threat to him. They informed about the incident to SP, DSP and SHO of police station. Thereafter, at about 12:00 PM, petitioner along with co-accused came on different vehicles and armed with various kind of weapons and entered into the house of the complainant, in his absence. All of them started giving pushes to the ladies, present in the house. Petitioner snatched gold chain worn by his wife and they searched the whole house and Rs.5,000/- were taken by them. They also raised *lalkara* that where is Harjinder Singh, they will kill him and when the father of the complainant came outside, all the accused persons pull his beard and threatened that they will kill them. Thereafter, on hearing raulla, when people of the village started gathering, accused persons came out in the street and started searching the complainant but could not find him. Hence, FIR (supra) got registered.

4. Learned counsel for the petitioner *inter alia* contends that petitioner was declared proclaimed offender behind his back, when he was not in India. Proclamation was issued against the petitioner without following the drill of Section 82 Cr.P.C. and the non-compliance of the mandatory provisions vitiates the entire proceedings which suffers from incurable illegality as he was never served and co-accused of the petitioner have already been acquitted in the present case.

5. *Per contra*, Learned State counsel 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 his presence.

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

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. 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.

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 a compromise has also been effected between the parties.

10. In view of the aforesaid facts and circumstances and in view of the ratio of law laid down in *Major Singh @ Major (supra)*, the present petition is allowed and the impugned order dated 15.05.2006 (Annexure P-3), vide which, the petitioner was declared proclaimed offender is quashed.

11. The petitioner is directed to appear before the trial Court within a period of 06 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 All India Pingalwara Charitable Society Jalandhar, for wasting precious time of the Court.

12. The cost will be deposited by the petitioner prior to surrendering before the trial Court and a receipt of the same shall be produced before the trial Court at the time of surrendering, which shall send a report to this Court in this regard after verifying the same.

13. Pending miscellaneous application(s), if any, also stand(s) disposed of.

November 07, 2024

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(HARPREET SINGH BRAR)

JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |