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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-8066 of 2024
Date of Decision: February 15, 2024

Balwinder Kumar
.....Petitioner
versus
State of Punjab and another
.....Respondents

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Ms. Deepika Chauhan, Advocate for
Mr. Satnam Singh, Advocate
for the petitioner

Mr. Subhash Godara, Addl. A.G. Punjab

Harpreet Singh Brar, J. (Oral)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 02.12.2023 (Annexure P-1) passed by learned Judicial Magistrate 1st Class, Phillaur vide which the petitioner was declared as proclaimed person in NACT No. 98 of 2020 dated 04.03.2020 titled as *Piara Singh vs. Balwinder Singh* filed under Section 138 of the Negotiable Instruments Act.
2. Brief facts of the case are that respondent No. 2 filed one complaint under Section 138 of the Negotiable Instruments Act against the petitioner alleging that the petitioner had issued one cheque of Rs. 1,50,000/- to the complainant, however, the same was dishonored due to insufficient funds. After first hearing on 04.03.2020, the matter was adjourned to 0205.2020, however, after 28.03.2020 due to COVID-19 pandemic the case could not proceed further before the learned trial Court. Thereafter, on 07.10.2021 again notice was issued to the petitioner and the matter was adjourned for 07.01.2022. On 07.01.2022

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again the matter was adjourned for 09.05.2022 and bailable warrants of the petitioner were issued. However, as the bailable warrants of the petitioner could not be executed therefore, learned trial Court without ascertaining the reason for the same, straight way issued non bailable warrant of the petitioner for 16.02.2023. Further, on 16.02.2023 non-bailable warrants of the present petitioner could not be executed therefore, fresh non-bailable warrants were issued on 16.02.2023. Ultimately, on 11.08.2023 the proclamation against the present petitioner was issued for 27.10.2023.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner does not have any intention of not appearing before the trial Court.

4. Notice of motion.

5. Mr. Subhash Godara, Addl. A.G. Punjab who is present in Court, accepts notice on behalf of respondent No.1-State and has not been able to controvert the aforesaid facts.

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 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. 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.

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 present petition is allowed, without issuing notice to respondent No. 2 in order to save time of the Court and to avoid litigation expenses to be incurred on the part of the respondent, the impugned order dated 02.12.2023 (Annexure P-1) vide which the petitioner was declared proclaimed person is set aside.

8. The petitioner is directed to appear before the trial Court within a period of 15 days 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, Jalandhar, for wasting precious time of the Court.

February 15, 2024

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(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No