

CRM-M-8473-2024
Date of decision: 16.02.2024

Kamal KumarPetitioner

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aditya Sanghi, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 03.06.2023 (Annexure P-1) passed by the learned Sub Divisional Judicial Magistrate, Dabwali vide which the petitioner has been declared as proclaimed offender and all consequential proceedings arising therefrom, in case bearing FIR No.360 dated 26.08.2018 under Section 13 of the Public Gambling Act, 1867 registered at Police Station City Mandi Dabwali, District Sirsa, Haryana.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner was regularly appearing before the learned trial Court except on 29.03.2023. It is further submitted that the petitioner has noted down the wrong date i.e. 29.07.2023 instead of 29.03.2023. Thereafter, when the petitioner went to the Court at Dabwali for scribing some agreement, he met his counsel who informed him that due to his non-appearance, his bail order has been cancelled and his bail bonds/surety bonds have been forfeited to State vide order dated 29.03.2023 and he was ordered to be summoned through warrants of arrest for

17.04.2023.

Thereafter, on 03.06.2023, the petitioner was declared as proclaimed person. Aggrieved by the said impugned order dated 03.06.2023 (Annexure P-1), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the petitioner was never served with any bailable warrants, non-bailable warrants or even any proclamation and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Ultimately, vide impugned order dated 03.06.2023, the petitioner has been declared as proclaimed person. 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 and also on the ground of unintentional non-appearance of the petitioner due to his act of noting down the date wrongly.

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 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.

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 (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. 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 of hearing.

11. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 03.06.2023 (Annexure P-1),

vide which the petitioner was declared as proclaimed person, is hereby set aside.

12. The petitioner is directed to appear before the trial Court within a period four weeks from today and on his doing so, he shall be admitted to bail on his furnishing the adequate 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, Sirsa, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

16.02.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No