

131 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-9898-2024
Date of decision: 26.02.2024

Loven Sharma (@ Nannu

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mukesh Garg, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of impugned order dated 24.11.2023 (Annexure P-4) and all other subsequent proceedings vide which the petitioner was declared as proclaimed person in case bearing FIR No.193 dated 10.09.2017 under Sections 61/1/14 of the Punjab Excise Act, 1914 registered at Police Station Kotwali Patiala, District Patiala (Annexure P-1).

2. Learned counsel appearing for the petitioner, *inter alia*, contends that the challan has already been presented by the police in the FIR (*supra*) and the petitioner furnished his bail bonds/surety bonds and joined the trial. Thereafter, he could not engage a counsel for his trial and by mistake, skipped the trial and did not appear before the trial Court, due to which, his bail was cancelled and bail bonds/surety bonds were forfeited to the State. Thereafter, the petitioner met with the counsel who filed an anticipatory bail application

which was allowed by the learned Additional Sessions Judge, Patiala and came to know that earlier counsel of the petitioner did not inform the petitioner due to their personal dispute regarding fee and the petitioner could not join the proceedings and therefore, the trial Court vide order dated 24.11.2023 (Annexure P-4) declared the petitioner as proclaimed person. Aggrieved by the said impugned order dated 24.11.2023 (Annexure P-4), the petitioner has approached this Court by way of instant petition.

3. It is further 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.

4. 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. Sandeep Kumar, DAG, Punjab who is present in Court, accepts notice on behalf of the respondent-State 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. 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. The impugned order dated 24.11.2023 (Annexure P-4) vide which the petitioner was declared proclaimed person is hereby set aside.

12. The petitioner is directed to appear before the trial 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 Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

26.02.2024
Neha

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