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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-12539-2023 (O&M)  
Date of decision: 24.07.2024

Parminder Pal

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. D.S. Sidhu, Advocate for  
Mr. Vikas Bali, Advocate  
for the petitioner.

Mr. Rishabh Singla, AAG Punjab.

Mr. Amit Dhawan, Advocate  
for respondent No.2.

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HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for quashing of order dated 14.07.2017 (Annexure P-14) passed by learned trial Court in FIR No.87 dated 12.05.2016 under Sections 406, 498-A of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Nakodar, District Jalandhar Rural, vide which the petitioner was declared as proclaimed person and all the consequential proceedings emanating therefrom.
2. Learned counsel for the petitioner, *inter alia*, contends that FIR



(*supra*) was registered on 12.05.2016, in which the petitioner is the only accused and much prior to that, he left for Italy on 29.11.2015. He further contends that challan was presented on 17.08.2017. Since the petitioner was abroad at that time, notice could not be served upon him and as such, he was not aware about presentation of challan, therefore, he could not appear before learned trial Court. In order to effect warrants of arrest upon the petitioner, the Investigating Officer went to his house on several occasions and he recorded statement of Member Panchayat of the village, who stated that house of the petitioner is locked. The prosecution never made any sincere efforts to serve the petitioner, as he was in Italy at the time of registration of FIR (*supra*) and when the notice/warrants were issued against him. He also contends that on account of his non-appearance, learned trial Court declared the petitioner as proclaimed person vide order dated 14.07.2017 (Annexure P-4) and the intimation was further sent to SHO concerned to facilitate him to lodge an FIR against the proclaimed person for commission of offence under Section 174-A IPC. Aggrieved by the said impugned order dated 14.07.2017 (Annexure P-14), the petitioner has approached this Court by way of instant petition.

3. Learned counsel for the petitioner submits that the impugned order is liable to be set aside on the ground that the mandate of Section 82 Cr.P.C. has not been followed in its letter and spirit by learned trial Court and the petitioner has been declared as proclaimed person on 14.07.2017. In support of his arguments, learned counsel for the petitioner relies upon the



judgment passed by this Court in ***Sonu Vs. State of Haryana, 2021 (1) RCR (Cri.) 319*** and the judgment passed by the Gujarat High Court in ***Govindbhai Patel Vs. State of Gujarat, 2004 (4) RCR (Criminal) 830***.

4. Learned State counsel, assisted by learned counsel for respondent No.2, supports the order passed by learned trial Court, by contending that the petitioner did not put in appearance before learned trial Court intentionally and deliberately and, therefore, having left with no other option, proclamation was issued to secure his presence.

5. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

6. 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.

7. 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. 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.

8. Keeping in view the aforesaid facts and circumstances of the present case, the present petition is allowed and the impugned order dated 14.07.2017 (Annexure P-14), vide which the petitioner was declared proclaimed person as well as all the consequential proceedings emanating therefrom, are hereby set aside.

9. The petitioner is directed to appear before learned 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/surety bonds to the satisfaction of learned 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.

10. The receipt of payment of costs imposed upon the petitioner must be presented before learned trial Court. Learned Court below is directed to grant bail to the petitioner only upon verification of the payment of said costs.

[ HARPREET SINGH BRAR ]  
JUDGE

24.07.2024  
*vishnu*

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No