



218-2 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-11607-2019 (O&M)
Date of Decision: 21.11.2024

Amandeep Singh Bhinder

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Dr. Anmol Rattan Sidhu, Senior Advocate
 with Mr. Pradeep Virk, Advocate,
 Mr. Shiv Kumar Sharma, Advocate
 and Mr. Bhisham Kinger, Advocate for the petitioner.

Mr. Vishav Deep Goyal, Advocate for respondent No.2.

Mr. Nitesh Sharma, DAG, Punjab.

HARPREET SINGH BRAR, J.(ORAL)

1. The instant petition is preferred under Section 482 Cr.P.C. seeking quashing of order dated 04.01.2019 passed by the learned Sub Divisional Judicial Magistrate, Dasuya whereby the petitioner has been declared to be a proclaimed offender in the case stemming from FIR No. 208 dated 28.12.2017 registered under Section 498-A IPC at Police Station Dasuya.

2. Briefly, the facts as alleged by the prosecution are that the marriage between the petitioner and Noreen Virk, daughter of respondent No.2 was solemnized on 10.11.2013. Soon after the marriage, the petitioner went to Canada where Noreen Virk joined him on 09.03.2016. A daughter was also born to the couple on 14.12.2016 for which the daughter of respondent No.2 was mistreated. The petitioner and his family started pressurizing her to send Rs. 5,00,000/- to help the petitioner to buy a house in Canada, as well as furniture and a washing machine. When she failed to do so, the petitioner and his mother started torturing her physically and mentally. Noreen Virk also



called the police in Canada at '911.' Ultimately, Noreen Virk and her daughter were shunned out of the matrimonial home by the petitioner on 14.02.2017.

The petitioner and her family also snatched her *stridhan* and dowry articles.

3. Learned Senior counsel for the petitioner *inter alia* submits that Noreen Virk started living separately from the petitioner on the advice of respondent No.2. She has also been granted CAD 519 per month as maintenance and spousal support to the amount of CAD 9200 by the concerned Canadian Court. The petitioner and Noreen Virk are permanent residents of Canada and the FIR(supra) has been unjustly registered by respondent No.2, father-in-law of the petitioner. No part of the alleged offence occurred in India. In spite of being aware of the fact that the petitioner resides in Canada, non-bailable warrants sent to his Ludhiana address, which were eventually received back unserved. No summons or warrants were ever served on the petitioner in Canada. Moreover, there is nothing on record that would indicate that the petitioner is willfully concealing himself from the process of law. Firstly, there was no occasion to invoke Section 82 Cr.P.C. but assuming *arguendo*, that there was, the proclamation as not issues as envisaged by the said provision.

4. Learned counsel for respondent No.2 as well as the 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. Moreover, 30 days had passed since the issuance of the proclamation, therefore, having left with no other option, the learned trial Court has correctly issued proclamation to secure his presence.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the parties



were referred to mediation vide order dated 12.02.2020. However, the efforts could not succeed. It appears that the couple has been granted divorce by the Superior Court of Justice, Ontario, Canada vide order dated 27.03.2018 and the same was to take effect from 31.05.2018(Annexure P-5). Moreover, the issue qua custody of their minor child also stands settled.

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. A perusal of the order dated 29.10.2018 (Annexure P-2) reveals that the arrest warrants were received back unserved. Moreover, the statement of Jaspal Kaur, mother of the petitioner, dated 29.11.2018 (Annexure P-4) makes it clear that the petitioner is a permanent resident of Canada. When the petitioner does not reside at his Ludhiana address, no purpose is served by affixing notices there. The trial Court issued proclamation without recording reasons of its belief that the petitioner has absconded or is concealing himself. Surprisingly, no exercise was undertaken to verify the current address of the petitioner before embarking upon this exercise, in spite of knowing that both the petitioner and Noreen Kaur reside in Canada. This Court in the judgment passed in ***Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406*** 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.

8. 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 undertaken to come forward and appear before the trial Court on each and every date.

9. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 04.01.2019 vide which the petitioner was declared proclaimed offender, is hereby set aside. The petitioner is directed to appear before the learned trial Court within a period of 8 weeks from today and on his doing so, he shall be admitted to bail on furnishing bail bonds and surety bonds to the satisfaction of the trial Court and subject to payment of costs of Rs.20,000/- with Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

10. Receipt of payment of cost must be presented before learned trial Court and learned trial Court is directed to verify the same.

11. In view of the above, the present petition is allowed. Pending miscellaneous application(s), if any, also stand disposed of.

21.11.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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