



CRM-M-14364-2023 (O&M)

1

233 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-14364-2023 (O&M)

Date of Decision: 19.09.2024

JIWAN SINGH

...PETITIONER

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Tejinder Pal Singh Thakur, Advocate
for the petitioners.

Mr. Rishabh Singla, AAG Punjab.

HARPREET SINGH BRAR J. (ORAL)

1. The present petition has been filed under Section 482 of Cr.P.C. seeking quashing of the order dated 27.04.2021 (Annexure P-5) passed by learned Chief Judicial Magistrate, Sangrur vide which the petitioner has been declared as proclaimed person in case bearing FIR No. 62 dated 29.03.2019, registered under Sections 363, 366-A (offence under Section 6 of Protection of Children from Sexual Offences Act, 2012 added later on) at Police Station City Sangrur, District Sangrur.

2. Learned counsel appearing for the petitioner *inter alia* contends that in the FIR(supra), learned trial Court had issued warrant of arrest of the petitioner and warrant officer had complied with the order of learned trial Court but the summons could not be served as the petitioner was not residing at the given address mentioned in the aforesaid FIR. Therefore, the non-bailable warrants issued against the petitioner had been received back unexecuted. Therefore, the petitioner could not appear before the trial Court as he was not aware about the registration of FIR(supra). Thus, learned trial Court has not followed the mandate

**CRM-M-14364-2023 (O&M)****2**

submits that the FIR(supra), out of which, proclaimed person proceedings have emerged, has already been quashed by this Court vide order of even passed in CRM-M-14379-2023 titled as '*Jiwan Singh Vs. State of Punjab and Others*'. He submits that once the original proceedings have come to an end, therefore, the present proceedings arising out of the original proceedings, should also come to an end.

3. Per contra, the learned State counsel admits that the original proceedings have been quashed by this Court vide order of even date and does not object to the quashing of the instant FIR, but supports 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.

4. I have heard learned counsel for the parties and gone through the case with with their able assistance.

5. 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.

6. 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.

7. 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 moreover the primary proceedings have been quashed by this Court vide order of even date passed in CRM-M-14379-2023 titled as '*Jiwan Singh Vs. State of Punjab and Others*'.

8. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 27.04.2021 (Annexure P-5) vide which the petitioner was declared proclaimed person, is hereby set aside along with all consequential proceedings arising therefrom subject to payment of costs of Rs.10,000/- to be deposited with the PGIMER Chandigarh Poor Patients' Welfare Fund, for wasting precious time of the Court, within two weeks from today.

(HARPREET SINGH BRAR)
JUDGE

19.09.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No