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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-13894-2024 (O&M)
Date of decision: 18.03.2024

Gurjeet Singh

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. J.S. Chahal, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 31.10.2023 (Annexure P-4) passed by the learned Sub Divisional Judicial Magistrate, Dhuri in case CIS No.NACT-269-2022 titled as '*Mahinder Singh Vs. Gurjeet Singh*', whereby the petitioner was declared as proclaimed person and all the consequential proceedings emanating therefrom.

2. Learned counsel appearing for the petitioner, *inter alia*, contends that a complaint under Section 138 of the Negotiable Instruments Act was filed against the petitioner on the ground of dishonouring of cheque bearing No.000005 dated 21.06.2022 amounting to Rs.7,10,000/- issued in

favour of the complainant/respondent No.2 by the petitioner in discharge of his liability. The petitioner never received any summons. On 16.08.2023, the learned trial Court issued proclamation under Sections 82 & 83 Cr.P.C. against the petitioner, for 19.10.2023. Since proclamation was effected on 10.09.2023 and the period of 30 days has not lapsed, therefore, the case was again adjourned to 31.10.2023 and on that date, the trial Court declared the petitioner as proclaimed offender. Aggrieved by the said impugned order dated 31.10.2023 (Annexure P-4), the petitioner has approached this Court by way of instant petition. 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.

3. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

4. Notice of motion.

5. Mr. Subhash Godara, Addl. A.G., Punjab, who is present in Court, accepts notice on behalf of respondent No.1-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.

6. 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.

7. 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.

8. 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.

9. 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 and the impugned order dated 31.10.2023 (Annexure P-4), vide which the petitioner was declared proclaimed offender as well as all the consequential proceedings emanating therefrom, are hereby set aside subject to payment of Rs.10,000/- as costs to be deposited with the District Legal Services Authority, Sangrur, for wasting precious time of the Court.

18.03.2024
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[HARPREET SINGH BRAR]
JUDGE

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