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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-14205-2024 (O&M)
Date of decision: 19.03.2024

Sukhvinder Kaur

... Petitioner

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Digvijay, Advocate for
Mr. Yowan Sharma, 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 14.06.2023 (Annexure P-3) [*wrongly mentioned as 01.08.2023 (Annexure P-2)*] passed by the learned Judicial Magistrate 1st Class, Kalka in complaint bearing No.NACT/189/2018 titled as '*Gurdeep Singh Vs. Sukhvinder Kaur*' (Annexure P-1), whereby the petitioner was declared as proclaimed person and FIR No.229 dated 01.08.2023 under Section 174-A of IPC, registered at Police Station Kalka as well as all the consequential proceedings emanating therefrom.

2. Learned counsel appearing for the petitioner, *inter alia*, contends that a complaint under Section 138 of N.I. Act was filed against the petitioner

on the allegations that the complainant advanced friendly loan of Rs.20,000/- to the petitioner-accused in the month of January, 2018 to be returned within one month. After making repeated requests to return the amount, the petitioner issued an account payee cheque bearing No.048716 dated 12.04.2018 amounting to Rs.20,000/- in favour of the complainant-respondent in discharge of her liability. On presentation, aforesaid cheque was returned by the bank vide memo dated 09.07.2018 with remarks "Insufficient Funds". Thereafter, complainant-respondent served legal notice dated 10.07.2018 upon the accused demanding the cheque amount, the petitioner-accused failed to make the payment. He further contends that the petitioner was never served with summons or warrants in the complaint and on 14.06.2023, the learned trial Court declared the petitioner as proclaimed person 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 14.06.2023 (Annexure P-2), 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. Ms. Geeta Sharma, DAG, Haryana, 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.

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. Once the impugned order passed under Section 82 Cr.P.C. is found to be suffering from incurable illegality, the FIR registered on the basis of the same under Section 174-A IPC would not survive either.

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.

10. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 14.06.2023 (Annexure P-2), vide which the petitioner was declared proclaimed person and FIR No.229 dated 01.08.2023 under Section 174-A of IPC, registered at Police Station Kalka 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 Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

[HARPREET SINGH BRAR]
JUDGE

19.03.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No