



CRM-M-28850-2015

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH****CRM-M-28850-2015****Date of decision: 19.11.2024**

VINOD KUMAR

... PETITIONER

V/s

STATE OF PUNJAB

...RESPONDENT

**CORAM: HON'BLE MR. JUSTICE SUMEET GOEL**Present: Mr. Amaninder Preet, Legal Aid Counsel  
for the petitioner.

Mr. Yuvraj Singh Tiwana, AAG, Punjab.

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**SUMEET GOEL, J.**

1. Present petition under Section 482 of the Code of Criminal Procedure is filed by the petitioner, who is an accused in case FIR No.30 dated 18.07.2010, registered at Police Station Kathgarh, District SBS Nagar, under Section 498-A of the IPC. The challenge in the petition is laid to the proceedings undertaken by the learned trial Court, whereby, as per the case set up in the petition, the petitioner is stated to have been declared as a proclaimed offender in the said case, vide the impugned order dated 05.10.2012.



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2. Learned counsel for the petitioner has submitted that the petitioner has been illegally and erroneously declared a proclaimed offender in the case by the trial Court. It is submitted that no proper service of summons a warrants was ever effected upon the petitioner in the present case.

3. *Per contra*, learned State counsel has argued that the order impugned in the petition i.e., the order dated 05.10.2012, does not suffer from any legal vice and hence the present petition deserves to be rejected.

4. Perusal of the pleadings in the petition shows that the petitioner has laid challenge to the order dated 05.10.2012 (annexed as Annexure P-4 with the present petition), alleging that, vide this order, the petitioner has been declared as proclaimed offender in the case. However, the said order (Annexure P-4) is the order dated 05.10.2012 passed by the Sub-Divisional Judicial Magistrate, Balachaur, SBS Nagar. Perusal of this order shows that, vide this order, the learned Magistrate only directed the issuance of a proclamation under Section 82 of the Cr.P.C., for 20.11.2012. The petitioner was not declared a proclaimed offender vide this order, as alleged in the present petition under Section 482 of the Cr.P.C. filed by the petitioner.

5. Faced with this situation, it is submitted on behalf of the learned counsel for the petitioner that, subsequent to the proclamation

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exercise undertaken in pursuance of Annexure P-4, the petitioner was declared a proclaimed person vide order dated 18.12.2012.

6. Present petition, filed on 25.08.2015, having been filed almost three years after the passing of the order dated 18.12.2012, declaring the petitioner as a proclaimed person, contains no pleadings impugning the legality a veracity of the order dated 18.12.2012. It is contended on behalf of the petitioner that, due to sheer oversight and inadvertence, under a *bona fide* mistake, the notice in the order dated 18.12.2012 was overlooked, and instead, the order 05.10.2012 was impugned in the petition, as the proclaimed proceedings against the petitioner emanated from the said order only. However, it is submitted that the order dated 18.12.2012, passed by the learned Magistrate, declaring the person as a proclaimed person, is also not sustainable in law, as no proper procedure as envisaged under Section 82 of the Cr.P.C. was followed before passing the said order.

7 In view of the above facts and circumstances, I am of the considered view that the inadvertent and *bona fide* error crept in while filing the petition, shall not prevail upon the substantial right of the petitioner. Such an error shall not pave the way for the dismissal of the petition filed by the petitioner, on account of technical and procedural lapses, creating a bar for him from seeking redressal of his grievance in accordance with the law. The principle of justice dictates that courts must consider the intent and circumstances surrounding a *bona fide* mistake made by a litigant. When an error occurs without



any foul play, fraudulent intent, or malice, it should not automatically result in harsh penalties or adverse consequences. Courts are not only the custodians of legal procedures but also the protectors of justice and equity. They must ensure that technicalities do not overshadow the fundamental objective of delivering fair outcomes. In such situations, courts have a duty to adopt a pragmatic and equitable approach, recognizing the human element in litigation. A hyper-technical view risks undermining the very purpose of justice by prioritizing procedural correctness over substantive fairness. Condoning genuine mistakes aligns with the broader mandate of courts to dispense justice that is not only legally sound but also morally upright. This perspective ensures that procedural lapses do not unjustly obstruct a litigant's access to a fair hearing or result in a miscarriage of justice. By addressing such errors with compassion and discretion, courts reinforce their role as institutions that balance the rule of law with the principles of equity, ensuring that justice prevails over rigid technicalities.

7.1 As such in the interest of justice, the present petition is allowed to the extent that liberty is afforded to the petitioner to challenge the order dated 18.12.2012, if so advised, in accordance with the law. If any such petition is filed by the petitioner, the same shall be decided on its own merits, without being influenced by the observations made in this order.

8.           The petition in hand is allowed to the above extent. It is made clear that the merits of the order dated 18.12.2012 have not been ratiocinated upon, in the present order passed by this Court.

9.           Pending application(s), if any, shall also stand disposed of accordingly.

(SUMEET GOEL)  
JUDGE

November 19, 2024  
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| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |