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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17571-2024 (O&M)
Date of decision: 09.04.2024

Mukesh Kumar @ Mukesh

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ramnish Puri, Advocate and
Ms. Monika Tanwar, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 26.03.2018 (Annexure P-5) passed by the learned Judicial Magistrate 1st Class, Jind in FIR No.102 dated 05.09.2017 under Sections 376(2)(n), 376(2)(f), 354-A of IPC, registered at Women Police Station Jind, whereby the petitioner was declared as proclaimed person and all the consequential proceedings emanating therefrom.
2. Learned counsel appearing for the petitioner contends that marriage between the petitioner and respondent No.2 was solemnized on 10.11.2023 according to Hindu rites and rituals. Out of this wedlock, one child namely Parv was born. After some time, marriage came to an end since

2009, the parties are living separately. With the intervention of respectables of the society, the matter was compromised between the parties. Thereafter, the parties filed a petition under Section 13-B of the Hindu Marriage Act, 1955 and learned Additional Sessions Judge, Narnaul passed a decree of divorce by way of mutual consent on 19.10.2015. Since the petitioner was not residing at his native village in District Jind and was residing in Gurugram, he was never served with the summons. It is further contended that the petitioner left for Malaysia on 29.08.2017 and returned back to India on 24.01.2019 and during this period, he was not present in India. He also contends that on account of his non-appearance, the learned trial Court declared the petitioner as proclaimed person vide order dated 26.03.2018 (Annexure P-5) and the intimation was further sent to SHO concerned to lodge an FIR against the proclaimed person for commission of offence under Section 174-A IPC. Aggrieved by the said impugned order dated 26.03.2018 (Annexure P-5), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the impugned order is liable to be set aside on the ground that the mandate of Section 82 Cr.P.C. has not been followed in its letter and spirit by the trial Court and the petitioner has been declared as proclaimed person on 26.03.2018. In support of his arguments, counsel for the petitioner relies upon the judgment passed by this Court in ***Sonu Vs. State of Haryana, 2021 (1) RCR (Cri.) 319*** and the judgment passed by the Gujarat High Court in

Govindbhai Patel Vs. State of Gujarat, 2004 (4) RCR (Criminal) 830.

4. Notice of motion.

5. Ms. Geeta Sharma, DAG, Haryana, 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. 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 Cr.P.C. and non-recording of the

satisfaction itself makes such order suffering from incurable illegality. 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. In view of the aforesaid facts and circumstances, present petition is allowed and impugned order dated 26.03.2018 (Annexure P-5), vide which the petitioner was declared proclaimed person as well as all the consequential proceedings emanating therefrom, are hereby set aside subject to payment of Rs.20,000/- as costs, to be deposited with the District Legal Services Authority, Jind, for wasting precious time of the Court.

09.04.2024
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No