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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-21450-2024 (O&M)
Date of decision: 02.05.2024

Jasvir Singh

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rakesh Kumar, 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 FIR No.23 dated 22.03.2013 under Sections 498-A & 406 of the Indian Penal Code, 1860, registered at Police Station Begowal, District Kapurthala and the order dated 12.03.2014 (Annexure P-4) passed by the learned Chief Judicial Magistrate, Kapurthala, whereby the petitioner was declared as proclaimed person as well as all the consequential proceedings emanating therefrom, on the basis of compromise dated 06.03.2024 (Annexure P-2).

2. Learned counsel for the petitioner submits that at this stage, he does not intend to press the present petition qua the prayer for quashing of

FIR (*supra*) on the basis of compromise and confines his prayer only for quashing of the impugned order dated 12.03.2014 (Annexure P-4).

3. Accordingly, present petition qua quashing of FIR (*supra*) is dismissed as not pressed at this stage.

4. Learned counsel for the petitioner, *inter alia*, contends that marriage between the petitioner and respondent No.2 was solemnized on 18.01.2004 according to Sikh rites and rituals and out of this wedlock, one male child namely Prabhjot Singh was born on 31.01.2008. Due to some temperamental differences, marriage could not survive and ultimately, FIR (*supra*) was registered by respondent No.2 and at that time, the petitioner was not in India and on account of his non-appearance, vide impugned order dated 12.03.2014, learned trial Court declared him proclaimed offender. He further contends that with the intervention of the relatives and respectables of the society, the matter has been compromised between the parties vide compromise deed dated 06.03.2024 (Annexure P-2) and on the basis of same, the parties have already filed a petition under Section 13-B of the Hindu Marriage Act, 1955, which is pending before the concerned Family Court.

5. Learned counsel for the petitioner submits that the impugned order dated 12.03.2024 (Annexure P-4) 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 learned trial Court and the petitioner has wrongly been declared as proclaimed person. In support of his arguments, learned 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*.

6. Notice of motion.

7. Mr. Subhash Godara, Addl. A.G., Punjab, who is present in Court accepts notice on behalf of respondent No.1-State and Mr. Vishal Sharda, Advocate accepts notice on behalf of respondent No.2 and files his *Vakalatnama*, which is taken on record. They have not disputed the factum of compromise and support the impugned order passed by learned trial Court by contending that the petitioner did not put in appearance before learned trial Court intentionally and deliberately and, therefore, having left with no other option, proclamation was issued to secure his presence.

8. 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.

9. 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.

10. 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 disposed of and the impugned order dated 12.03.2014 (Annexure P-4), 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.10,000/- as costs to be deposited with the District Legal Services Authority, Kapurthala, for wasting precious time of the Court.

10. The petitioner is directed to surrender before learned trial Court within a period of eight weeks from today and he be admitted on bail on his furnishing bail/surety bonds to the satisfaction of the trial Court/Illaq Magistrate, concerned.

[HARPREET SINGH BRAR]
JUDGE

02.05.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No