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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-20924-2024 (O&M)  
Date of decision: 27.08.2024

Sukhwinder Kaur @ Sabhi

... Petitioner

Vs.

Gurnoor Kaur @ Reetu and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. M.S. Saini, Advocate  
for the petitioner.

Mr. P.P. Rana, Advocate  
for respondent No.1.

Mr. Rishabh Singla, AAG Punjab.

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HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for quashing of order dated 16.11.2023 (Annexure P-3) passed by learned Judicial Magistrate 1<sup>st</sup> Class, Hoshiarpur in Complaint No.COMI/194/2019 under Sections 406, 498-A, 506 of the Indian Penal Code, 1860 (for short 'IPC'), vide which the petitioner was declared as proclaimed person and all the consequential proceedings emanating therefrom.



2. Learned counsel for the petitioner contends that the petitioner is sister-in-law of the complainant and much prior to passing of the impugned order, she was out of India and was on study visa and no notice was served upon her. Now with the intervention of respectable persons and relatives, a compromise dated 12.03.2024 has been effected between the parties. Under this bonafide impression, the petitioner could not appear before learned trial Court and on account of her non-appearance, learned trial Court declared her as proclaimed person vide impugned order dated 16.11.2023 (Annexure P-3) 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 order, the petitioner has approached this Court by way of instant petition.

3. Learned counsel 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 learned trial Court and the petitioner has been declared as proclaimed person on 16.11.2023. 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***.

4. Learned State counsel, assisted by learned counsel for respondent No.1, supports the 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 her presence.

5. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

6. 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.

7. 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.

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8. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 16.11.2023 (Annexure P-3), 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.5,000/- as costs to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh within a period of two weeks from today, for wasting precious time of the Court.

[ HARPREET SINGH BRAR ]  
JUDGE

27.08.2024  
*vishnu*

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No