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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-23091-2024 (O&M)
Date of decision: 09.05.2024

Varun Sharma

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Fatehjeet Singh, 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 21.05.2022 (Annexure P-4) passed by learned Judicial Magistrate 1st Class, Jalandhar in FIR No.50 dated 28.09.2020 under Section 498-A of the Indian Penal Code, 1860 (for short 'IPC'), vide which the petitioner was declared as proclaimed offender and all the consequential proceedings emanating therefrom.

2. Learned counsel for the petitioner, *inter alia*, contends that the FIR (*supra*) was registered on 28.09.2020 and the petitioner went to Italy on 21.09.2020 and till date, he has not come back to India. It is further



contended that the petitioner was never served with any notice or summons and without following the proper procedure under Section 82 Cr.P.C., learned trial Court declared the petitioner as proclaimed offender vide impugned order dated 21.05.2022 (Annexure P-4) and the intimation was further sent to SHO concerned to facilitate him to lodge an FIR against the petitioner for commission of offence under Section 174-A IPC. Aggrieved by the impugned 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 the trial Court and the petitioner has been declared as proclaimed person on 21.05.2022. 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. Notice of motion.

5. Mr. Subhash Godara, Addl. A.G., Punjab, who is present in Court accepts notice on behalf of respondent No.1-State and 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 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 the impugned order dated 21.05.2022 (Annexure P-4), vide which the petitioner was declared proclaimed offender 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 within two weeks, for wasting precious time of the Court.

[HARPREET SINGH BRAR]
JUDGE

09.05.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No