

both wanted to marry each other, however, family members of the petitioner were against this marriage. Thereafter, the petitioner went Dubai on 20.03.2019 to earn his livelihood and since then, he is residing there. Copy of passport of the petitioner indicating his departure from India and arrival at Dubai, UAE is attached herewith as Annexure P-2. Further, in the absence of the petitioner, the FIR (*supra*) was got registered by the complainant on the basis of false allegations and the petitioner was declared as proclaimed offender vide order dated 21.09.2019 passed by the learned Judicial Magistrate 1st Class, Jalandhar (Annexure P-3). Thereafter, the challan in the present case was presented on 24.09.2019 when the petitioner was already at abroad. Aggrieved by the impugned order dated 21.09.2019 (Annexure P-3), 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.

4. Notice of motion.

5. Mr. Subhash Godara, Addl.A.G., Punjab, who is present in Court accepts notice on behalf of the respondent 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. As far as possible, presence of the accused in the eventuality of his non-appearance ought to be secured by issuing summons or bailable warrants and non-bailable warrants/proclamation should not generally be issued. A perusal of the impugned order reveals that the trial Court without issuing summons or bailable warrants straight away issued warrants of arrest/proclamation, much less, without recording reasons of its belief that the petitioner has absconded or is concealing himself. 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.

9. The stand of learned counsel representing the petitioner is that the petitioner has been declared a proclaimed person in contravention of the prescribed procedure under Section 82 of the Code of Criminal Procedure. The petitioner was never served before the proclamation was issued under Section 82 Cr.P.C.

CRM-M-22555-2024

-4-

10. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 21.09.2019 (Annexure P-2) vide which the petitioner was declared as proclaimed offender is hereby set aside and the petitioner is directed to surrender before the trial Court within a period of six weeks from today subject to payment of Rs.10,000/- as costs to be deposited with the District Legal Services Authority, Jalandhar for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

06.05.2024
Neha

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