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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-23903-2024 (O&M)
Date of decision: 14.05.2024

Jaswinder Kaur

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mayur Karkra, 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 15.10.2019 (Annexure P-12) passed by learned Judicial Magistrate 1st Class, Rajpura, in CHI No.187/2019/SC 305/2019 titled as '*State Vs. Jaswinder Kaur*', instituted on 17.07.2019, arising out of FIR No.45 dated 17.04.2019 under Sections 302, 201, 34 of the Indian Penal Code, 1860 (for short 'IPC') (Section 304-B of IPC was added later on), registered at Police Station Shambhu, District Patiala, whereby the petitioner was declared as proclaimed person and all the consequential proceedings emanating therefrom.



2. Learned counsel for the petitioner contends that daughter of complainant-respondent No.2 and son of the petitioner performed love marriage and thereafter, they approached this Court by way of filing CRM-M-33288-2018 seeking protection and to substantiate the claim, he relied upon the order dated 08.08.2018 passed in the aforementioned petition (Annexure P-4) and the marriage certificate dated 28.07.2018 (Annexure P-5). Moreover, during pendency of the investigation, jurisdictional police authorities have conducted an inquiry, in which the petitioner duly appeared before the concerned Deputy Superintendent of Police, Circle Ghanaur and the same is discernible from the final report under Section 173 Cr.P.C. available on record as Annexure P-2. At that time, it was conveyed to the petitioner that she along with her husband and daughter have been exonerated and final report under Section 173 Cr.P.C. was filed only against her son Lakhvir Singh @ Tarun.

3. Learned counsel for the petitioner further contends that the petitioner had been working under Mahatma Gandhi National Rural Employment Guarantee Act from 06.06.2019 to 19.06.2022 and this fact was in the knowledge of the prosecution, but no summons were ever served upon her. The investigating agency, after filing of final report under Section 173 Cr.P.C., sought issuance of warrants against the petitioner and learned trial Court, vide order dated 24.07.2019, straightway issued non-bailable warrants for 07.08.2019 and when non-bailable warrants were not served, again on 07.08.2019, fresh warrants were issued for 21.08.2019. Thereafter, learned



trial Court, without taking into account the fact that the petitioner is working in the same village and without satisfying the factum of her non-appearance, vide order dated 21.08.2019, directed to issue proclamation against her for 09.10.2019. It is also contended that in pursuance of the order dated 21.08.2019, HC Amrinder Singh, who went to effect service upon the petitioner on 28.08.2019, stated that he had done all the formalities with regard to proclamation. However, no munadi was done by the said police official. Ultimately, on account of her non-appearance, learned trial Court, vide impugned order dated 15.10.2019 (Annexure P-12), declared the petitioner as proclaimed person and the intimation was further sent to SHO concerned to make an entry in this regard in the relevant register. Aggrieved by the said impugned order dated 15.10.2019 (Annexure P-12), the petitioner has approached this Court by way of instant petition.

4. 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 15.10.2019. 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*.

5. Notice of motion.

6. 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 her presence.

7. 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.

8. 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.

9. 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.

10. In view of the aforesaid facts and circumstances, present petition is allowed and the impugned order dated 15.10.2019 (Annexure P-12), 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 Poor Patient Welfare Fund, PGIMER, Chandigarh within two weeks, for wasting precious time of the Court.

14.05.2024
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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No