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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-24807-2024

Date of decision: 17.05.2024

Kamla Joshi and others

....Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Vivek Sharma Vats, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR bearing No.0274 dated 03.06.2022 registered under Section 174-A of IPC registered at Police Station Urban Estate Hisar, District Hisar (Annexure P-9), final report dated 14.10.2022 (Annexure P-12) and 21.03.2023 (Annexure P-13), order dated 18.12.2023 (Annexure P-14) and order dated 24.01.2020 (Annexure P-8) as well as consequential proceedings arising therefrom in light of the fact that in the main case, the petitioners stand acquitted vide judgment dated 14.02.2024 (Annexure P-15).

2. Brief facts of the case are that the petitioners were on bail and subsequently, vide order dated 04.06.2016, petitioners No.1 to 3 & 5 were granted permanent exemption, whereas, petitioner No.4 was appearing regularly before the learned trial Court. Thereafter, the advocate of the petitioners intimated them that whenever their presence will be required, a telephonic

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intimation will be done. Due to the assurance given by the advocate and also due to some financial loss coupled with health issue, the petitioners have to shift from the address in order to manage the financial and health problems and due to some unavoidable circumstances, the petitioners could not follow up the case as well as advocate also failed to intimate the progress of the case. Thereafter, vide order dated 19.08.2019, warrants of arrest were issued against the petitioners for 19.09.2019 (Annexure P-1). On receiving report regarding warrants of arrest being 'unexecuted', fresh warrants of arrest were issued on 19.09.2019, 14.10.2019, 05.11.2019 and 26.11.2019 (Annexures P-2 to P-5, respectively). On 05.12.2019, warrants of arrest issued received back with the report of being unexecuted on the ground that the petitioners are not residing on the given address and the trial Court has initiated P.O. proceedings against them by observing that they are concealing themselves and avoiding their arrest and ultimately declared them proclaimed persons vide order dated 24.01.2020 (Annexure P-8) and the above mentioned FIR was registered against them. Since the petitioners were not aware of the proceedings, they have been arrested and resultantly, they have filed an application for bail and vide orders dated 03.09.2022 & 24.03.2023 (Annexures P-10 & P-11, respectively), they have been granted bail. It is further alleged that thereafter, in an illegal and arbitrary manner, final reports dated 14.10.2022 & 21.03.2023 were submitted before the learned Court below and vide order dated 18.12.2023, order of charge sheet was issued, whereas, vide judgment dated 14.02.2024 (Annexure P-15), the petitioners were acquitted of charges. Aggrieved by the same, the petitioners have approached this Court by way of instant petition.



3. Learned counsel for the petitioners submits that the warrants of arrest issued to the petitioners were never served and, therefore, the finding of the trial Court that the petitioners are intentionally evading their arrest, is erroneous. Ultimately, vide order dated 24.01.2020 (Annexure P-8), the petitioners have been declared as proclaimed persons and consequently, an FIR under Section 174-A of IPC was registered against them. It is further contended that the above said impugned order as well as FIR and all consequential proceedings are liable to be set aside on the ground that the mandate of Section 82 (1) of Cr.P.C. has not been followed in its letter and spirit by the trial Court as the proclamation was not read publicly in some conspicuous place of the village/town of the petitioner neither it was published in any newspaper circulating at his place of residence.

4. It is further submitted that the FIR (*supra*) warrants quashing on the basis that as per Section 195 Cr.P.C, the FIR (*supra*) cannot be registered for offence punishable under Section 174-A IPC and rather a criminal complaint had to be filed by the learned Magistrate in the jurisdictional Court. He places reliance on a decision rendered by a Co-ordinate bench of this Court in ***Pardeep Kumar vs. State of Punjab, CRM-M-41656-2023*** decided on 23.08.2023.

5. Notice of motion.

6. Ms. Geeta Sharma, DAG, Haryana, 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 petitioners 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 their 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. At the outset, it is important to discuss the scope of Section 195 of the Code of Criminal Procedure. A perusal of the same shows that where an offence under Section 174-A of IPC is concerned, its cognizance cannot be taken by any Court except on the complaint in writing of the public servant/Judge concerned or of some other public servant/Judge to whom he is administratively subordinate. Therefore, in the present case, the learned Magistrate should have instituted a complaint in writing in the competent jurisdictional Court.

9. Invariably, 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. As far as possible, presence of the accused persons in the eventuality of their 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 issued the proclamation without recording reasons of its belief that the petitioners have absconded or is concealing themselves. This Court in the judgment passed in

Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406;



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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.

11. The stand of learned counsel representing the petitioners is that the petitioners have been declared as proclaimed persons in contravention of the prescribed procedure under Section 82 of the Code of Criminal Procedure. The petitioners were never served before the proclamation was issued under Section 82 Cr.P.C.

12. Learned counsel representing the State has not been able to controvert the aforesaid facts and the position of law as laid down in the aforesaid judgment.

13. In view of the aforesaid facts and circumstances, the present petition is allowed and FIR bearing No.0274 dated 03.06.2022 under Section 174-A of IPC registered at Police Station Urban Estate Hisar, District Hisar (Annexure P-9), final report dated 14.10.2022 (Annexure P-12) and 21.03.2023 (Annexure P-13), order dated 18.12.2023 (Annexure P-14) and order dated 24.01.2020 (Annexure P-8) 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

17.05.2024

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