



**221-1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-48763-2018

Date of decision: 07.11.2024

HARJINDER SINGH

...PETITIONER

V/S

DARSHANA DEVI AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. H.S. Thiara, Advocate for the petitioner.

Ms. Ramta Chowdhary, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of the complaint bearing No.67/1/08 (Annexure P-1), summoning order dated 06.06.2015 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Phillaur and proclamation order dated 01.12.2016 (Annexure P-3) passed by learned Additional Sessions Judge, Jalandhar in complaint filed under Section 3 of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Sections 363, 366, 376, 506, 34 of IPC registered at Police Station Phillaur, District Jalandhar.

2. Learned counsel for the petitioner wishes to withdraw his prayer with regard to quashing of the complaint (supra) and summoning order dated 06.06.2015 and confines himself to the limited prayer seeking quashing of the order dated 01.12.2016 (Annexure P-3), vide which the petitioner has been declared as 'Proclaimed Offender'.

3. Brief facts of the case as alleged are that the present case was registered on the complaint made by Darshana Devi (respondent No.1 herein), belongs to Ad-dharmi (Chamar) community (recognized as Scheduled Caste by Punjab Government) was elected as Sarpanch in the year 2003, who stated that



petitioner along with other co-accused were in illegal possession of *Panchayat* land and as a Sarpanch, she approached the Block Development Officer and *Panchayat* Officer, to initiate ejectment proceedings against them. She intended that the said *panchayat* land should be used for construction of a community centre in the village for which, grant of Rs.1,00,000/- was given by the government, but the accused persons were creating hindrance in the construction of the said community hall. Therefore she moved a complaint before Block and Development Officer as well as Sub Divisional Magistrate Phillaur, due to which, the petitioner and other accused persons started tarnishing her image. On 27.09.2007 at about 6:30/7:00 PM, the complainant was going to her house from Phillaur, on the way petitioner and other co-accused chased her and surrounded her. Petitioner slapped the complainant and all of them tried to throw her in their car, however, on seeing some passerby, all the accused fled away from the spot and they openly said '*Is Kutti Chamari Sarpanchni Ne Sarpanch Ban Ke Pind Vich Gandh Pa Ditta Hai*' and said they will not allow her to perform her duty as *Sarpanch*. Thereafter, she narrated the whole incident to her husband. On 28.09.2007, she moved an application to S.S.P. (Rural), Jalandhar, who marked the said application to SHO, PS Phillaur but no action was taken. Pritam Singh, who witnessed the occurrence, also moved an application to SHO, PS Phillaur on 11.10.2007 for being pressurized by the accused to not to depose against them before the police. Thereafter, the complainant filed a writ petition before this Court, who gave direction to SSP Jalandhar (Rural) to look into the matter, but no action was taken against the accused. Hence, the present complaint was filed.

4. Learned counsel for the petitioner *inter alia* contends that petitioner was declared proclaimed offender behind his back, when he was not



in India. Proclamation was issued against the petitioner without following the drill of Section 82 Cr.P.C. and the non-compliance of the mandatory provisions vitiates the entire proceedings which suffers from incurable illegality as he was never served and co-accused of the petitioner have already been acquitted in the present case.

5. *Per contra*, Learned State counsel 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, 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. A perusal of the impugned order reveals that the trial Court issued proclamation 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 of Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality. In the judgment passed by this Court in ***Sonu Vs. State of Haryana***



2021 (1) RCR (CrI.) 319, it has been held that 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. The sole purpose of issuance of non-bailable warrants or issuance of proclamation is to secure presence of the accused before the trial Court. The petitioner in the present case has himself come forward and a compromise has also been effected between the parties.

10. In view of the aforesaid facts and circumstances and in view of the ratio of law laid down in *Major Singh @ Major (supra)*, the present petition is allowed and the impugned order dated 01.12.2016 (Annexure P-3), vide which, the petitioner was declared proclaimed offender is quashed.

11. The petitioner is directed to appear before the trial Court within a period of 06 weeks from today and on his doing so, he shall be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.10,000/- to be deposited with the All India Pingalwara Charitable Society Jalandhar, for wasting precious time of the Court.

12. The cost will be deposited by the petitioner prior to surrendering before the trial Court and a receipt of the same shall be produced before the trial Court at the time of surrendering, which shall send a report to this Court in this regard after verifying the same.

(HARPREET SINGH BRAR)
JUDGE

November 07, 2024
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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |