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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-25995-2024 (O&M)
Date of decision: 23.05.2024

Meenu Bala

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Navraj Singh, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for quashing of order dated 18.05.2023 (Annexure P-8) passed by learned Judicial Magistrate 1st Class, Ludhiana, in FIR No.51 dated 18.05.2015 under Sections 406, 498-A, 323, 34 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Women Cell, Ludhiana (Annexure P-1), whereby the petitioner was declared as proclaimed person and all the consequential proceedings emanating therefrom.
2. Learned counsel appearing for the petitioner contends that after



registration of the FIR (*supra*), the matter was compromised between the parties and on the basis of same, respondent No.2 and her husband-Rajinder Kumar filed a petition under Section 13-B of the Hindu Marriage Act, 1955 seeking divorce by way of mutual consent, which stands allowed vide judgment and decree dated 30.11.2018 (Annexure P-2). Thereafter, brother and father of the petitioner as well as the petitioner approached this Court by way of filing CRM-M-52738-2019 seeking quashing of the FIR (*supra*), which was allowed qua brother and father of the petitioner vide order dated 18.01.2019 (Annexure P-3), however, the same was dismissed qua the petitioner, as he was declared a proclaimed offender vide impugned order. It is further contended that after registration of the FIR (*supra*), on 23.05.2015, the petitioner along with her husband went abroad and respondent No.2 made an application to the Commissioner of Police, Ludhiana to conduct re-investigation and after conducting re-investigation, the petitioner was nominated as an accused in the present FIR. Thereafter, final report under Section 173 Cr.P.C. was filed only against father-in-law and husband of respondent No.2 and the petitioner was kept in column No.2. The petitioner filed a petition i.e. CRM-M-38320-2015 seeking quashing of FIR (*supra*) and vide order dated 16.01.2017, the same was dismissed as withdrawn with liberty to file a fresh petition with better particulars. On 07.11.2015, the petitioner was declared proclaimed offender and she again approached this Court by filing CRM-M-13501-2017 for quashing of the order dated



07.11.2015 and while setting aside the order, declaring her proclaimed offender, said petition was allowed vide order dated 28.02.2020. It is also contended that the petitioner was under the impression that the FIR (*supra*) has already been quashed in view of the compromise and went to Italy along with her husband and child and is residing there since 2015 and was not aware of the present proceedings, therefore, she could not appear before learned trial Court and account of her non-appearance, learned trial Court, without following proper procedure prescribed under Section 82 Cr.P.C., declared the petitioner as proclaimed person vide order dated 18.05.2023 (Annexure P-8) and the intimation was further sent to the Commissioner of Police, Ludhiana through SHO, Police Station Women. Aggrieved by the impugned order dated 18.05.2023 (Annexure P-8), 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 learned trial Court and the petitioner has been declared as proclaimed person on 18.05.2023. 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. Sandeep Kumar, DAG, Punjab, who is present in Court, accepts notice on behalf of respondent No.1-State and Mr. Vijay Lath, Advocate accepts notice on behalf of respondent No.2-complainant. They support 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.

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 today itself.

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 18.05.2023 (Annexure P-8), vide which the petitioner was declared proclaimed person as well as all the consequential proceedings emanating therefrom, are hereby set aside.

10. The petitioner is directed to appear before learned trial Court within a period of four weeks from today and on her doing so, she shall be admitted to bail on her furnishing bail bonds and surety bonds to the satisfaction of the trial Court, however, subject to payment of Rs.10,000/- as costs to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

[HARPREET SINGH BRAR]
JUDGE

23.05.2024

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No