

203-2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-30907-2023

Date of decision: 18.01.2024

MAAN SINGH AND OTHERS

...PETITIONERS

V/S

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Balvinder Sangwan, Advocate for the petitioners.
Mrs. Geeta Sharma, DAG, Haryana and
Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR J. (ORAL)

The present petition has been filed under Section 482 of Cr.P.C. seeking quashing of FIR No.784 dated 27.12.2001 (Annexure P-2) registered under Sections 365 and 34 of Indian Penal Code, 1860 at Police Station Ballabgarh, District Faridabad and quashing of the order dated 24.12.2002 (Annexure P-2) passed by the Court of learned Judicial Magistrate Ist Class, Faridabad, whereby the petitioners have been declared as 'Proclaimed Offenders'.

2. Learned counsel for the petitioners wishes to withdraw his prayer with regard to quashing of the FIR No.784 dated 27.12.2001 (Annexure P-2) registered under Sections 365 and 34 of Indian Penal Code, 1860 at Police Station Ballabgarh, District Faridabad and confines himself to the limited prayer seeking quashing of the order dated 24.12.2002 (Annexure P-2), vide which the petitioners have been declared as 'Proclaimed Offenders' behind their back, especially when the similarly situated co-accused of the petitioners who faced the trial, have already been acquitted by the learned trial Court.
3. Brief facts of the case, as per the prosecution are that husband of the complainant was abducted by his two son-in-laws and one other person. The motive for abduction was dispute regarding property.

igned order was passed without following the drill of Section 82 of Cr.P.C. Learned counsel further submits that the petitioners being residents of Rajasthan were not aware of the present proceedings but they had no intention to avoid the process of law. The petitioners were not served and have been wrongly declared as 'Proclaimed Offenders' vide order dated 24.12.2002. It is contended that the impugned order is liable to be set aside on the ground that the mandate of Section 82 of Cr.P.C. has not been followed in its letter and spirit by the trial Court.

5. Learned State counsel 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.

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. A perusal of the impugned order reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioners have absconded or are concealing themselves. 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 (Crl.) 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 petitioners in the present case have themselves come forward and have undertaken to appear before the trial Court on each and every date.

10. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to the respondent No.2 in order to save time of the Court and to avoid litigation expenses to be incurred on the part of respondent No.2 and the impugned order dated 24.12.2002 (Annexure P-2) vide which the petitioners were declared as proclaimed offenders is set aside.

11. The petitioners are directed to appear before the trial Court within a period of 02 weeks from today and on their doing so, they shall be admitted to bail on their 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 District Legal Services Authority, Faridabad for wasting precious time of the Court.

January 18, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |