

CRM-M-31325-2024
Date of decision: 11.09.2024

...PETITIONER

...RESPONDENT

4. Learned counsel for the petitioner inter alia contends that 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 the petitioner has already been acquitted in FIR No.480 dated 02.12.2018 registered under Sections 363/366-A/376/420/467/468/471/120-B of IPC registered at Police Station Sadar Gohana.

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 petitioner and perused the record of the case with his 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 (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 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 09.09.2021 (Annexure P-7), vide which, the petitioner was declared proclaimed person is quashed subject to costs of Rs.10,000/- to be deposited with the Poor Patients Welfare Funds, PGIMER, Chandigarh for wasting precious time of the Court.

11. Receipt of payment of cost must be presented before learned trial Court and learned trial Court is directed to verify the same.

September 11, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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