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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32202-2024 (O&M)
Date of decision: 10.07.2024

Dharminder Singh

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Naveen Bawa, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 01.08.2023 (Annexure P-7) passed by learned Judicial Magistrate 1st Class, Ludhiana in FIR No.51 dated 27.11.2020 under Sections 406 & 498-A of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Women Ludhiana, District Ludhiana, whereby the petitioner was declared as proclaimed person and all the consequential proceedings emanating therefrom.

2. Learned counsel for the petitioner, *inter alia*, contends that FIR (*supra*) was registered on the basis of an application given by the

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complainant on the allegations of demand of dowry. Now with the intervention of respectables of the society, the parties have amicably resolved the dispute. It is further contended that on 09.06.2023, learned trial Court initiated the proceedings declaring the petitioner as proclaimed person and asked him to appear before learned trial Court on or before 01.07.2023, thus, mandatory period of 30 days was not given to the petitioner and without following the proper procedure envisaged under Section 82 Cr.P.C., learned trial Court declared the petitioner as proclaimed person vide order dated 01.08.2023 (Annexure P-7) and the intimation was further sent to SHO concerned to facilitate him to lodge an FIR against the proclaimed person for commission of offence under Section 174-A IPC. Aggrieved by the said impugned order (Annexure P-7), the petitioner has approached this Court by way of instant petition.

3. Learned counsel 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 01.08.2023. 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. Subhash Godara, Addl. A.G., Punjab, who is present in



Court accepts notice on behalf of respondent No.1-State and supports 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 his 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. 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 of the case, present petition is allowed and the impugned order dated 01.08.2023 (Annexure P-7), declaring the petitioner as proclaimed person as well as all the consequential proceedings emanating therefrom, 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

10.07.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No