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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32383-2024 (O&M)
Date of decision: 10.07.2024

Chan Mahi and others

... Petitioners

Vs.

State of Punjab

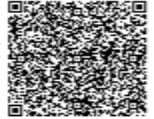
... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manvinder Dalal, Advocate for
Mr. Bhawesh Chaudhary, Advocate
for the petitioners.

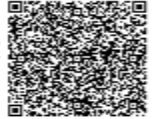
HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 04.04.2024 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Hoshiarpur, in Complaint case bearing CIS No.COMI/210/2019 under Sections 406 & 498-A of the Indian Penal Code, 1860 (for short 'IPC'), whereby the petitioners were declared as proclaimed persons and all the consequential proceedings emanating therefrom.
2. Learned counsel for the petitioners, *inter alia*, contends that the complainant filed the complaint (*supra*) against all and sundry members of her in-laws family. Thereafter, learned trial Court, vide order dated



04.03.2023 (Annexure P-1), while holding that no *prima facie* case under Section 406 of IPC is made out, summoned the petitioners to face trial under Section 498-A of IPC. It is further contended that the petitioners never received summons or warrants on their residential address. Moreover, petitioner No.4 is married sister-in-law of the complainant and she was married prior to marriage of the complainant with son of petitioners No.1 & 2 and she is residing in her matrimonial home in Kartarpur, District Jalandhar. A perusal of the zimni orders indicates that after issuing the summons, learned trial Court again and again issued notice/bailable/non-bailable warrants and the same were never received back served or unserved and vide order dated 20.02.2024, learned trial Court issued proclamation against the petitioners and the same was also not effected. Since the petitioners were not aware about notice/bailable/non-bailable warrants, therefore, they could not appear before learned trial Court. Learned counsel for the petitioners also contends that on account of their non-appearance, learned trial Court declared the petitioners as proclaimed persons vide order dated 04.04.2024 (Annexure P-3) and the intimation was further sent to SHO concerned. Aggrieved by the said impugned order dated 04.04.2024 (Annexure P-3), the petitioners have approached this Court by way of instant petition.

3. Learned counsel for the petitioners 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 petitioners have been declared as proclaimed persons on 04.04.2024. In support of his arguments, learned counsel for the petitioners 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 the respondent-State and supports the order passed by learned trial Court, by contending that the petitioners 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 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. 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 04.04.2024 (Annexure P-3), declaring the petitioners as proclaimed persons 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