

265 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-34068-2023 (O&M)
Date of Decision: 05.03.2024

...Petitioner

V/S

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG Punjab.

Mr. R.D. Rattewal, Advocate for
respondent No. 2.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 03.12.2016 (Annexure P-1) passed by the learned Sub Divisional Judicial Magistrate, Garhshankar in CHI/82/2017 whereby, the petitioner was declared as proclaimed offender along with the order dated 15.01.2016 (Annexure P-1A) vide which Non Bailable Warrants have been issued against the petitioner in case bearing FIR No. 97 dated 02.06.2015 registered under Sections 406, 420 of Indian Penal Code at Police Station Garhshankar, District Hoshiarpur and all subsequent proceedings arising therefrom.
2. Brief facts of the case are that petitioner along with co-accused took Rs. 22 lacs from respondent No. 2 for executing a registry of 25 marla plot in the year 2012 in favour of respondent No. 2 and have failed to do the same and also did they return the money back to respondent No. 2.
3. Learned counsel for the petitioner *inter alia* contends that petitioner was not aware of the institution of the present proceedings before

the Court of Learned SDJM, Garhshankar and vide order dated 03.12.2016, the trial Court declared the petitioner as proclaimed offender. Aggrieved by the said impugned order dated 03.12.2016 (Annexure P-1), the petitioner has approached this Court by way of instant petition.

3. Learned counsel appearing for the petitioner submits that the non-bailable warrants and even the proclamation issued to the petitioner were never served as the petitioner has never been a resident of the address mentioned in the FIR and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. 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. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

5. Mr. R.D. Rattewal, Advocate has put in appearance on behalf of respondent No. 2 and files his power of attorney. Same is taken on record. Registry is directed to tag the same at the appropriate place.

6. 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 her presence.

7. 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.

8. 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.

9. 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.

10. 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 has undertaken to appear before the trial Court on each and every date.

11. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned orders dated 03.12.2016 (Annexure P-1) and order dated 15.01.2016 (Annexure P-1A) vide which the petitioner was declared as proclaimed offender and non-bailable warrants were issued against him respectively, are set aside.

12. The petitioner is directed to appear before the trial Court within a period of 02 weeks from today and on his doing so, he shall be admitted to bail on his 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 PGIMER Poor Patient Welfare Fund, Chandigarh, for wasting precious time of the Court.

05.03.2024
Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

(HARPREET SINGH BRAR)
JUDGE