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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34170-2024 (O&M)
Date of decision: 22.07.2024

Abdul Hameed and another

... Petitioners

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

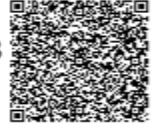
Present: Mr. Munfaid Khan, Advocate
for the petitioners.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 31.01.2017 (Annexure P-9) passed by learned Judicial Magistrate 1st Class, Palwal, in FIR No.36 dated 31.03.2016 under Section 12 of the Protection of Children from Sexual Offences Act, 2012, Sections 34, 363, 366-A of the Indian Penal Code, 1860 and Section 3 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, registered at Women Police Station Palwal, District Palwal, whereby the petitioners were declared as proclaimed offenders and all the consequential proceedings emanating therefrom.



2. Learned counsel for the petitioners, *inter alia*, contends that earlier, an FIR No.171 dated 26.03.2014 was lodged by the complainant at Police Station Sadar Palwal against son of petitioner No.1, namely Sakir and one another boy namely Imran, in which, after conducting the trial, learned trial Court, vide judgment dated 29.07.2022, acquitted Sakir. After two years of registration of aforementioned FIR, the complainant, with false and concocted story, got registered FIR (*supra*) against four persons including the petitioners and aforesaid Sakir, whereas daughter of the complainant and Sakir performed love marriage with each other and they approached this Court seeking protection of their lives and liberty by filing CRM-M-11747-2016, which was disposed of vide order dated 05.04.2016 with a direction to Senior Superintendent of Police, Palwal to take necessary steps. He further contends that in the FIR (*supra*), two co-accused of the petitioners, namely Aabid and Abdul Ajij, were acquitted by learned trial Court vide judgment dated 05.04.2017 (Annexure P-4). During trial of FIR (*supra*), daughter of the complainant appeared as PW1 and stated that she had solemnized marriage with Sakir on her own will and consent and said Sakir did not commit any offence with her. Thereafter, co-accused Sakir was acquitted by learned trial Court vide judgment dated 17.02.2023 (Annexure P-6). He also contends that no notice/warrants regarding initiation of proclamation proceedings, was received by the petitioners, therefore, they could not appear before learned trial Court and on account of their non-appearance, learned



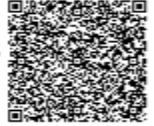
trial Court declared the petitioners as proclaimed offenders vide order dated 31.01.2017 (Annexure P-9) and the intimation was further sent to SHO concerned to facilitate him to lodge an FIR against the proclaimed offenders for commission of offence under Section 174-A IPC. Aggrieved by the said impugned order dated 31.01.2017 (Annexure P-9), 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 offenders on 31.01.2017. 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. Ranvir Singh Arya, Addl. AG, Haryana, 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 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

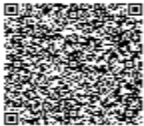


record of the case with their able assistance and with the consent of parties, the matter is taken up for final disposal.

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. Keeping in view of the aforesaid facts and circumstances, present petition is allowed and the impugned order dated 31.01.2017 (Annexure P-9), vide which the petitioners were declared proclaimed



offenders as well as all the consequential proceedings emanating therefrom, are hereby set aside subject to payment of Rs.5,000/- each as costs to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh within a period of two weeks from today, for wasting precious time of the Court.

10. The petitioners are directed to appear before learned trial Court within a period of four weeks from today and on their doing so, they will be admitted to bail on their furnishing bail/surety bonds to the satisfaction of learned trial Court.

11. The receipt of payment of costs imposed upon the petitioners must be presented before learned trial Court. Learned Court below is directed to grant bail to the petitioners only upon verification of the payment of said costs.

[HARPREET SINGH BRAR]
JUDGE

22.07.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No