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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35041-2024 (O&M)
Date of decision: 25.07.2024

Harbir Singh Sandhu

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. B.S. Jaswal, 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 25.04.2006 (Annexure P-4) passed by learned trial Court in FIR No.57 dated 19.07.2005 under Sections 498-A, 406, 420, 506, 120-B of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Khalra, District Tarn Taran, whereby the petitioner was declared as proclaimed offender and all the consequential proceedings emanating therefrom.

2. Learned counsel for the petitioner, *inter alia*, contends that when FIR (*supra*) was registered, the petitioner was abroad and thereafter, he never came to India. In the meantime, the complainant filed a divorce



petition under Section 13 of Hindu Marriage Act, 1955 and the same was decreed ex-parte on 12.08.2006. Learned trial Court issued bailable warrants on 13.01.2006 (Annexure P-2), which were received back unexecuted with the report that the petitioner left the village and is residing in Canada along with his family members and vide order dated 15.02.2006 (Annexure P-3), proclamation was issued against him for 30.03.2006 and on the said date, fresh proclamation was issued for 15.04.2006 and further the case was adjourned to 25.04.2006. Since no notice/warrants/proclamation was served upon the petitioner, he could not appear before learned trial Court. He also contends that on account of his non-appearance, learned trial Court declared the petitioner as proclaimed offender vide order dated 25.04.2006 (Annexure P-4). Aggrieved by the impugned order, 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 had been declared as proclaimed person on 25.04.2006. 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 the respondent-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. Keeping in view the aforesaid facts and circumstances of the case at hand, present petition is allowed and the impugned order dated 25.04.2006 (Annexure P-4), vide which the petitioner was declared proclaimed offender as well as all the consequential proceedings emanating therefrom, are hereby set aside.

10. The petitioner is directed to appear before learned trial Court within a period of four weeks from today and on his doing so, he shall be admitted to bail on his furnishing bail/surety bonds to the satisfaction of learned trial Court, along with costs of Rs.10,000/- to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

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

25.07.2024
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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No