



CRM-M-35877-2023 (O&M)

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239 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-35877-2023 (O&M)

Date of Decision: 03.09.2024

GURDIAL SINGH AND ANOTHER

...PETITIONERS

Versus

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Satnam Singh Thakur, Advocate for the petitioners.

Mr. Rishabh Singla, AAG Punjab.

HARPREET SINGH BRAR J. (ORAL)

1. The present petition has been filed under Section 482 of Cr.P.C. seeking quashing of the order dated 09.03.2020 (Annexure P-1) passed by learned Judicial Magistrate Ist Class, Kapurthala vide which the petitioners have been declared as proclaimed offenders in complaint No. COMI 53 of 2016 instituted on 06.07.2016 titled as ***Rajwinder Kaur Vs. Gurpreet Singh and Others*** under Sections 498-A, 406 and 34 of Indian Penal Code.

2. Learned counsel appearing for the petitioner *inter alia* contends that complaint (supra) was filed by complainant-Rajwinder Kaur i.e. daughter-in-law of present petitioners. It is further submitted that before solemnizing the marriage of the complainant with the son of the petitioners, petitioners were residing abroad and immediately after solemnization of marriage, they returned to Italy and did not stay with the complainant and through summoning order dated 15.06.2018, three accused including the present petitioners and their son were summoned only, however, bare perusal of the impugned order shows that five accused persons have been declared as proclaimed offenders including the accused who were not even summoned by the learned trial Court. It is further



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contended that the impugned order is liable to be set aside on the ground that the mandate of Section 82 (1) of Cr.P.C. has not been followed in its letter and spirit by the trial Court. It is also submitted that the petitioners undertake to appear before the trial Court on each and every date.

3. Notice of motion.

4. Mr. Rishabh Singla, AAG Punjab, who is present in Court, accepts notice for respondent and 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 his presence.

5. 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.

6. 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.

7. 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

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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.

8. 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 petitioners in the present case have themselves come forward and have undertaken to appear before the trial Court on each and every date.

9. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 09.03.2020 (Annexure P-1) vide which the petitioners were declared proclaimed offenders, is hereby set aside along with all consequential proceedings arising therefrom. The petitioners are directed to appear before the trial Court within four weeks and on his doing so, they shall be admitted to bail on their 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 Chandigarh Poor Patients' Welfare Fund, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

03.09.2024*Ajay Goswami*

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>