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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-13952-2023 (O&M)

Date of decision: 07.08.2024

Suriender Partap Singh and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Vipin Mahajan, Advocate
for the petitioners.

Mr. Subhash Godara, Addl.A.G., Punjab.

Mr. Parambir Singh, Advocate
for respondent No.2.**HARPREET SINGH BRAR, J. (ORAL)****CRM-31106-2024**

Allowed as prayed for.

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1. This petition has been filed under Section 482 of the Code of Criminal Procedure seeking quashing of FIR No.22 dated 11.02.2010 under Sections 406/498-A of IPC registered at Police Station Sadar Batala, Punjab and all subsequent proceedings arising therefrom in view of the compromise.

2. The following order was passed on 20.03.2024:-

'Report has been received from the District and Sessions Judge, Gurdaspur as per which the record of the case in question has been lost and the report regarding loss of the same has been sent to this Court as per rules.

Learned counsel for the petitioners has drawn attention of this Court to Annexure P-2 which is certified copy of order dated 04.02.2011 passed by the Court of the Judicial Magistrate Ist Class, Batala in the same very case whereby, the petitioners were ordered to be declared as proclaimed offenders.

On going through the order dated 04.02.2011, it is apparent that the concerned Magistrate did not follow the proper procedure for



issuance of proclamation as required under Section 82 of Cr.P.C. As per this order, the publication of proclamation was effected on 07.10.2010. Neither the date when this proclamation was issued nor the date for which it was published, has however, been mentioned in this order. The petitioners were declared as proclaimed offenders on 04.02.2011 i.e. after a gap of about 4 months of publication of proclamation. Unfortunately, due to loss of record of the concerned case by the trial Court, this Court is also unable to draw a definite conclusion as to particular date for which the proclamation was published but nonetheless, it is very much clear that once it was published for 07.10.2010, then there was no occasion for declaring the petitioners as proclaimed offenders after a gap of 4 months. Meaning thereby that the mandate of law that where period between the issuance and publication of proclamation and the specified date of hearing is proved to be less than 30 days then, the accused cannot be declared a proclaimed person and the proclamation has to be issued and published again, is not shown to have been complied with by learned Magistrate. The provisions of Section 82 are mandatory in nature. Any non-compliance therewith, cannot be cured as an 'irregularity' and renders the proclamation and proceedings subsequent thereto a nullity. Accordingly, there is no hesitation to hold that the impugned order dated 04.02.2011 is not sustainable in the eyes of law and is liable to be set aside for want of compliance of mandatory provisions. Accordingly, the abovementioned order whereby, the petitioners were declared as proclaimed offenders, is set aside. The petitioners are seeking quashing of FIR No.22 dated 11.02.2010 registered under Sections 406 and 498-A of IPC registered at Police Station Sadar Batala (Annexure P-1) along with all consequential proceedings arising therefrom on the basis compromise (Annexure P-4) arrived at between the petitioners and respondent No.2.

Learned counsel appearing for respondent No.2 admits the factum of compromise effected between the parties.

The parties and Investigating Officer are directed to appear before the Illaqa Magistrate/trial Court on 06.06.2024 or any other future date as per its convenience or on request of the parties for getting their statements recorded with regard to the compromise. However, it is made clear that no further adjournment shall be granted to the parties for that purpose. The Illaqa/Duty Magistrate shall submit the report on or before the next date of hearing. The report be forwarded to this Court specifying the following:-

- 1. The number of accused arraigned in the FIR and how many have appeared before it accused is absconding/proclaimed persons, in the case;*
 - 2. the name of the complainant and injured/aggrieved and whether all of them have appeared and made their statements in support of the compromise;*
 - 3. the stage of trial/proceedings pending;*
 - 4. if the compromise is genuine, voluntary and out of free will of the parties.*
 - 5. Whether any other criminal case pending against the accused.*
- Report of Illaqa/Duty Magistrate be awaited for 05.07.2024.'*



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3. In compliance of the above order, a report has been received from the concerned jurisdictional Court that the compromise between the parties is genuine and arrived at without any pressure or coercion from anyone.

4. In view of the compromise and the ratio of law laid down by the Hon'ble Supreme Court in **Narinder Singh and others vs. State of Punjab and another, (2014) 6 SCC 466**, **Ramgopal and another Vs. State of Madhya Pradesh 2021 SCC OnLine SC 834** and **Shakuntala Sawhney (Mrs) Vs. Kaushalya (Mrs.) and others (1980) 1 SCC 63** and Full Bench of this Court in **Kulwinder Singh Vs. State of Punjab 2007 (3) RCR (Crl.) 1052**, this petition is allowed and FIR No.22 dated 11.02.2010 under Sections 406/498-A of IPC registered at Police Station Sadar Batala, Punjab and all subsequent proceedings arising out of the same including order dated 04.02.2011 are quashed, *qua* the petitioners.

(HARPREET SINGH BRAR)
JUDGE

07.08.2024*Neha*

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