

240(3) IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-33595-2019 (O&M)

Date of Decision: 07.03.2024

NIRMALJIT SINGH

...Petitioner

V/S

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vishal Deep Goyal, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 08.09.2012 (Annexure P-2) passed by the learned Judicial Magistrate Ist Class, Ludhiana in case bearing FIR No. 74 dated 28.06.2008, registered under Sections 323, 506, 148 and 149 of Indian Penal Code at Police Station Dehlon, District Ludhiana (Rural).

2. FIR(supra) was registered on the statement made by complainant Gurmail Singh on the allegations that on 28.06.2008, when the complainant and his son Avtar Singh were going to their fields for making common crease and when they reached near their motor, then Manjit Singh, Nirmaljit Singh (petitioner herein), Kamaljit Singh, Kala Singh, Gurmit Singh Master and Jaspal Singh came there, armed with sticks and gandasi and encircled the complainant and his son. Thereafter the petitioner and other co-accused gave *soti* blows to the complainant and his son and when

they raised alarm, then the petitioner along with co-accused ran away from the spot.

3. Learned counsel for the petitioner *inter alia* contends that the impugned order dated 08.09.2012 of learned Judicial Magistrate Ist Class, Ludhiana has been passed in a perverse manner as the learned trial Court did not follow the proper procedure prescribed as per law and ignored the statute of Section 82 of the Code of Criminal Procedure. Aggrieved by the said impugned order dated 08.09.2012 (Annexure P-2), the petitioner has approached this Court by way of instant petition. It was further 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.

4. 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.

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 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 petitioner in the present case has himself come forward and has 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 and the impugned orders dated 08.09.2012 (Annexure P-2) vide which the petitioner was declared as proclaimed offender is hereby set aside.

10. The petitioner is directed to appear before the trial Court within a period of 08 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. 20,000/- to be deposited with the PGIMER Poor Patient Welfare Fund, Chandigarh, for wasting precious time of the Court.

07.03.2024
Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

(HARPREET SINGH BRAR)
JUDGE