

249-3 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39609-2023
Date of decision: 13.02.2024

RAJINDER SINGH
V/S
STATE OF PUNJAB
...PETITIONER
...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Inderpreet Singh, Advocate for
Mr. P.S. Khurana, Advocate for the petitioner.

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR J. (ORAL)

Prayer in the present petition filed under Section 482 of Code of Criminal Procedure is for quashing of impugned order dated 10.05.2023 (Annexure P-5) passed by learned JMIC, Payal in case FIR No.59 dated 21.05.2015 registered under Sections 420/467/468/120-B IPC at Police Station Payal, Police District Khanna, District Ludhiana, whereby the petitioner has been declared as proclaimed offender.

2. Learned counsel appearing for the petitioner submits that the petitioner is not named as an accused in the FIR (supra) and he has been summoned later on as additional accused, vide order dated 15.09.2022 (Annexure P-4), under Section 319 Cr.P.C. The petitioner was summoned as an additional accused at a time, when he already left India on 24.08.2022 and he has only returned on 31.07.2023, which is clearly discernible from the immigration entries on his passport available on record as Annexure P-3. Undisputedly, the petitioner was never served and it is 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. Learned counsel further relies upon the ratio of law laid down in ***Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506***, that the impugned order suffers from incurable illegality.

3. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date.

4. Learned State counsel supports the order passed by the learned trial Court by contending that the petitioner concealed himself intentionally and remained absconded 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 (supra)*** 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. Vide order dated 17.08.2023, the petitioner was directed to appear before the learned trial Court and in compliance of the above said order, he has appeared before the learned trial Court and has been admitted to regular bail, vide order dated 22.08.2022, on his furnishing bail bonds and surety bonds to th satisfaction of the trial Court.

10. In view of the aforesaid facts and circumstances and in view of the ratio of law laid down in **Major Singh @ Major** (*supra*), the present petition is allowed and the impugned order dated 10.05.2023 (Annexure P-5), vide which, the petitioner was declared proclaimed offender, is quashed.

February 13, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

- (i)

Whether speaking/reasoned

Yes/No
- (ii)

Whether reportable

Yes/No