



118-1 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-37663-2024 in/and
CRM-M-38404-2024
Date of decision: 19.09.2024

SAHIL SETHI

V/S

STATE OF HARYANA

...PETITIONER

...RESPONDENT

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR
Present: Mr. Parminder Singh, Advocate
 for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

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For the aforesaid reasons, present application stands allowed.
Main case is ordered to be taken on board today itself.

MAIN CASE

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 02.07.2018 (Annexure P-8) passed by the learned Chief Judicial Magistrate, Jagadhari as well as FIR No.401 dated 25.07.2018 registered under Section 174-A IPC at Police Station Yamuna Nagar City, District Yamuna Nagar in case bearing FIR No.684 dated 20.11.2017 registered under Sections 323, 34, 406, 498-A IPC at Police Station Yamuna Nagar City, District Yamuna Nagar whereby the petitioner was declared as proclaimed person and all consequential proceedings emanating therefrom.
2. Learned counsel for the petitioner submits that the petitioner has been declared as ‘Proclaimed Person’ behind his back when he was not in India. Learned counsel further contends that even prior to lodging of the FIR,



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petitioner was residing abroad and is still there. He never received any notice regarding the same. 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.

3. Learned counsel further contends that on account of his non-appearance, the trial Court declared the petitioner as proclaimed person vide order dated 02.07.2018 (Annexure P-8) and the intimation was further sent to SHO concerned to facilitate him to lodge an FIR against the proclaimed person for commission of offence under Section 174-A IPC. Hence, FIR under Section 174-A was registered against the petitioner. Aggrieved thereof, the petitioner has approached this Court by way of instant petition. In support of his arguments, 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. Ms. Geeta Sharma, DAG, Haryana, who is present in Court, accepts notice on behalf of respondent-State 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.

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. A perusal of the order dated reveals that vide order dated 28.08.2024 passed by this Court, the parties were directed to



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appear before the Mediation and Conciliation Centre of this Court and the matter has been compromised between the parties amicably. Vide order of even date, FIR (supra) has been quashed by this Court on the basis of compromise between the parties in case bearing CRM-M-39077-2024 titled as 'Sahil Sethi vs. State of Haryana and another'.

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. Learned State counsel very fairly concedes that the matter between the parties has been compromised in the Mediation and Conciliation Centre of this Court, for an amount of Rs.40,00,000/- to be given to the complainant towards her and her son's past, present and future alimony.

10. The stand of learned counsel representing the petitioner is that the



petitioner has been declared a proclaimed person in contravention of the prescribed procedure under Section 82 of the Code of Criminal Procedure. The petitioner was never served before the proclamation was issued under Section 82 Cr.P.C. Both the parties have settled the matter amicably which has resulted in quashing of FIR (supra). In the factual backdrop of this case, undisputedly, once the substantive offence already stands settled between the petitioner and the complainant, the impugned order dated 02.07.2018 and subsequent proceedings arising therefrom would be of no consequence.

11. Reliance in this regard has been placed upon various pronouncements on the issue involved in the present case. In ***CRM-M-43813-2018, Baldev Chand Bansal vs. State of Haryana and another, decided on 29.01.2019, Vikas Sharma vs. Gurpreet Singh Kohli and another, 2017, (3) L.A.R. 584, Microqual Techno Limited and others Vs. State of Haryana and another, 2015 (32) RCR (Crl.) 790 and Rajneesh Khanna Vs. State of Haryana and another, 2017(3) L.A.R. 555***, the Coordinate Benches of this Court in identical circumstances, has held that since the main complaint filed under Section 138 of the Act stands withdrawn in view of an amicable settlement between the parties, therefore, the impugned order and consequent FIR under Section 174-A IPC would be of no use.

12. A Coordinate Bench of this Court in ***Vikas Gupta vs. State of Haryana and others***, while quashing the FIR under Section 174-A of the IPC in ***CRM-M-19636-2018*** decided on 01.08.2018 has observed the following:-

“The ultimate aim, objective and goal of a legal system is to reconcile the social conflicts. Law is required only to ensure that people do not have to fight with each other just to protect their right to property, right to life and liberty and other rights secured to them by the legal system. The civil disputes



are the conflicts between two parties, having lesser overtones for the social order, social harmony or the society as such. Hence absolute freedom is given to the parties to settle their disputes by compromises, of course, coming with certain legal consequences as well. However, the criminal disputes do not necessarily restrict themselves to only two parties to the dispute in terms of their scope, consequences and effect. The criminal acts tend to cast their effect and consequences even upon the society at large. Therefore, the law prescribes punishment, severe punishments and the extreme punishments, including death penalty for criminal acts.”

13. Learned counsel representing the State has not been able to controvert the aforesaid facts and the position of law as laid down in the aforesaid judgment.

14. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 02.07.2018 (Annexure P-8) vide which the petitioner was declared proclaimed person as well as FIR No.401 dated 25.07.2018 registered under Section 174-A IPC at Police Station Yamuna Nagar City, District Yamuna Nagar and all the consequential proceedings emanating therefrom, are hereby quashed qua the petitioner.

September 19, 2024
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |