



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

CRM-M-39646-2024
Date of decision: 20.08.2024

Samshu Deen alias Shamsudeen alias Billu

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Saurabh Verma, Advocate and
Mr. G.S. Verma, Advocate
for the petitioner.

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

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of criminal complaint No.171 of 2019 dated 04.06.2019 under Sections 363/366-A/376/120-B of IPC and Section 6 of POCSO Act, 2012 (Annexure P-1) and summoning order dated 23.12.2022 passed by the learned Additional Sessions Judge, Fast Track Special Court, Hoshiarpur (Annexure P-2) as well as P.O. order dated 07.06.2023 passed by the learned Additional Sessions Judge, Fast Track Special Court, Hoshiarpur (Annexure P-3) *qua* the petitioner on the basis of compromise dated 22.05.2024 (Annexure P-4).

2. Learned counsel for the petitioner wishes to withdraw his prayer to the extent of quashing of criminal complaint No.171 of 2019 dated 04.06.2019 under Sections 363/366-A/376/120-B of IPC and Section 6 of POCSO Act,



2012 (Annexure P-1) and summoning order dated 23.12.2022 passed by the learned Additional Sessions Judge, Fast Track Special Court, Hoshiarpur (Annexure P-2) and confines his prayer to the extent of quashing of P.O. order dated 07.06.2023 passed by the learned Additional Sessions Judge, Fast Track Special Court, Hoshiarpur (Annexure P-3) *qua* the petitioner on the basis of compromise dated 22.05.2024 (Annexure P-4).

3. Allowed as prayed for.

4. Learned counsel for the petitioner, *inter alia*, contends that earlier on the same set of allegations, FIR No.187 dated 30.07.2015 under Sections 363, 366-A, 120-B of IPC and Section 376 of IPC (added later on), was registered at Police Station Tanda, District Hoshiarpur and after completing the investigation, the jurisdictional police authorities presented the final report under Section 173 Cr.P.C. and the complaint (*supra*) had been filed levelling the same allegations, in which the petitioner was summoned to face the trial and vide impugned order dated 07.06.2023 (Annexure P-3), was declared proclaimed offender, as he was never served with proper notice/summons. Now the parties have effected a compromise and compromise deed dated 22.05.2024 is available on record as Annexure P-4. In support of his arguments, learned counsel for the petitioner relies upon a judgment of this Court in ***Major Singh @ Major Vs. State of Punjab, 2023 (3) RCR (Criminal) 406; 2023 (2) Law Herald 1506***, wherein it 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. Both the parties have now settled the matter amicably vide Annexure P-4.

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

6. Notice of motion to the official respondent only.

7. Mr. Subhash Godara, Addl.A.G., Punjab who is present in Court accepts notice on behalf of official 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.

8. 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.

9. 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.

10. 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.

11. The sole purpose of 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.

12. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to the private respondents in order to save time of the Court and to avoid litigation expenses to be incurred on their part and the impugned order dated 07.06.2023 (Annexure P-3) vide which the petitioner was declared as proclaimed person as well as all the consequential proceedings emanating therefrom, are hereby set aside.

13. The petitioner is directed to appear before the trial Court within a period of four 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 subject to payment of Rs.10,000/- as costs to be deposited with the District Legal Services Authority, Hoshiarpur, for wasting precious time of the Court.

14. The receipt of payment of costs imposed must be presented before the learned trial Court. The learned Court below is directed to grant bail to the petitioner only upon verification of the payment of said costs.

(HARPREET SINGH BRAR)
JUDGE

20.08.2024
Neha

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