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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-42434-2024 (O&M)
Date of decision: 19.11.2024

Ravi Dass

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Surinder Thakur, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. Present petition has been filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking quashing of the
order dated 13.02.2023 (Annexure P-6) passed by learned Judicial Magistrate
1st Class, Hoshiarpur, vide which the petitioner was declared as proclaimed
person in FIR No.149 dated 23.09.2021 under Sections 498-A & 406 of the
Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station
Mehtiana, District Hoshiarpur.
2. Learned counsel for the petitioner, *inter alia*, contends that at the



time of registration of FIR (*supra*), the petitioner was abroad and he never came back to India thereafter. It is further contended that challan was presented on 15.10.2022 and since no notice was served upon the petitioner, he was not aware about presentation of challan, therefore, could not appear before learned trial Court and on account of his non-appearance, learned trial Court, vide impugned order dated 13.02.2023 (Annexure P-6), declared the petitioner as proclaimed person 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 of IPC (*now Section 209 of the Bharatiya Nyaya Sanhita, 2023*). Aggrieved by the said impugned order dated 13.02.2023 (Annexure P-6), the petitioner has approached this Court by way of instant petition.

3. Learned counsel for the petitioner submits that after passing of the impugned order (Annexure P-6), the petitioner and his wife have effected a compromise (Annexure P-7) and filed a petition under Section 13-B of the Hindu Marriage Act, 1955 seeking divorce by way of mutual consent. It is further contended that the impugned order is liable to be set aside on the ground that the mandate of Section 82 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') (*now Section 84 of BNSS*) has not been followed in its letter and spirit by learned trial Court and the petitioner has been declared as proclaimed person on 13.02.2023. In support of his arguments, learned



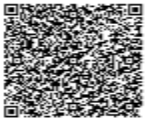
counsel for the petitioner relies upon the judgment passed by this Court in ***Sonu Vs. State of Haryana, 2021 (1) RCR (Cri.) 319*** and the judgment passed by the Gujarat High Court in ***Govindbhai Patel Vs. State of Gujarat, 2004 (4) RCR (Criminal) 830***.

4. Learned State counsel supports the order passed by learned trial Court, by contending that the petitioner did not put in appearance before learned trial Court intentionally and deliberately 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.

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. 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. (now Section 84 of BNSS) and



non-recording of the satisfaction itself makes such order suffering from incurable illegality. The conditions specified in Section 82(2) Cr.P.C. (*now Section 84(2) of BNSS*) 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. Keeping in view the aforesaid facts and circumstances of the case, present petition is allowed and the impugned order dated 13.02.2023 (Annexure P-6), vide which the petitioner was declared proclaimed person as well as all the consequential proceedings emanating therefrom, are hereby set aside.

[HARPREET SINGH BRAR]
JUDGE

19.11.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No