

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(234)

CRM-M-40712-2019
Date of Decision: 02.04.2024

Avtar Singh @ Vicky Singh and anotherPetitioners
Versus
State of Punjab and OthersRespondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. P.P.S.Tung, Advocate, for the petitioners.
Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, J.(ORAL)

1. The instant petition is preferred under Section 482 Cr.P.C. seeking quashing of complaint No.842 of 2023 dated 09.12.2023 under Section 498-A/420/506/120-B IPC (Annexure P-1) and order dated 12.09.2019 (Annexure P-2) whereby the petitioners were declared proclaimed persons.
2. Briefly, the facts are that petitioner no. 1 and respondent no. 4 solemnised their marriage in Malaysia where they began residing together as husband and wife. While in Malaysia, petitioner no. 1 had pressurised respondent no. 4 to abort pregnancies twice and when he tried to do the same this time, she warned him of legal action. Consequently, petitioner no. 1 fled to Punjab, after burning all the photographs of their wedding ceremony in Malaysia. On 01.08.2013, respondent no. 4 visited the house of the petitioners but they refused to rehabilitate her and adopt the child she was carrying and threatened to kill her.

3. Learned counsel for the petitioners *inter alia* submits that the petitioners were summoned by order dated 23.03.2015 to face trial in the complaint (supra). Thereafter, they were granted the concession of bail vide order dated 07.11.2016 passed by learned Additional Sessions Judge, Barnala. The petitioners only found out that they had been declared proclaimed persons vide order dated 12.09.2019 (Annexure P-2) passed by learned Judicial Magistrate Ist Class, Barnala, when the police raided their house. 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. 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 petitioners 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 their 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. On 23.09.2019, the following order was passed:

“Learned counsel for the petitioner has made statement withdrawing the relief seeking quashing of complaint No.842 dated 09.12.2013 titled as Manjit Kaur Vs. Vicky Singh and others, registered under Sections 498-A, 420, 506 and 120-B (Annexure P-1).

Petition qua above aspect stands dismissed as withdrawn.

Registry is directed to give necessary note on the petition.

Learned counsel for the petitioner has insisted that he prays for setting aside the order dated 12.09.2019 (Annexure P-

2) vide which, petitioners have been declared as proclaimed offenders.

Notice qua challenge to order dated 12.09.2019 (Annexure P-2) be issued for 17.02.2020 on necessary compliance.”

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. 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** 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.

9. 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 petitioners in the present case have themselves come forward and have undertaken to appear before the trial Court on each and every date.

10. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 12.09.2019(Annexure P-2) vide which the petitioners were declared proclaimed persons, is hereby set aside. The petitioners are directed to appear before the learned trial Court within a period of 4 weeks from today and on their doing so, they shall be admitted to bail on furnishing bail bonds and surety bonds to the satisfaction of the trial Court and subject to payment of costs of Rs.10,000/- with the District Legal Services Authority, Barnala, for wasting precious time of the Court.

11. Pending miscellaneous application(s), if any, also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

02.04.2024
anil

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