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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-45137-2024 (O&M)
Date of decision: 11.09.2024

Sukhdev Singh

... Petitioner

Vs.

State of Punjab and another

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ajay Pal Singh Rehan, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. This is second petition filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking quashing of the
order dated 23.12.2014 (Annexure P-8) passed by learned Chief Judicial
Magistrate, Ludhiana, vide which the petitioner was declared as proclaimed
offender in FIR No.13 dated 31.05.2024 under Sections 376 & 420 of the
Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station NRI,
District Ludhiana and all the consequential proceedings emanating
therefrom.

2. Briefly, the facts of the case, as alleged, are that marriage
between the petitioner and respondent No.2 was solemnized on 03.05.2010



in a very simple manner and it was second marriage of both of them. It is alleged that respondent No.2-complainant came to know about first marriage of the petitioner and after the marriage between the parties, the petitioner started residing with his wife from the first marriage. The petitioner assured respondent No.2-complainant to approve their marriage only after transfer of her plot in his name or in the names of his children from the first marriage. With these allegations, FIR (*supra*) was registered against the petitioner.

3. Learned counsel for the petitioner, at the very outset, submits that the petitioner has earlier approached this Court seeking the same relief by filing CRM-M-16839-2017, which was withdrawn by the petitioner on 28.03.2022, in view of the fact that respondent No.2-wife agreed to resolve the dispute amicably, as there was a compromise between the parties. However, respondent No.2 resiled from the compromise, as such, the petitioner has filed the present petition seeking quashing of the impugned order dated 23.12.2014 (Annexure P-8) declaring him as proclaimed offender.

4. Learned counsel for the petitioner, *inter alia*, contends that it is second marriage of both the petitioner and respondent No.2 and FIR (*supra*) was registered due to matrimonial dispute between the petitioner and his wife, which is purely private in nature. It is further contended that the petitioner is residing in UAE and is working in A1 Rakha Construction and General Transport Company since the year 1997 and he visited India in January, 2013 for a period of two and half months and returned back on



14.03.2013 and thereafter, never came to India till today, which is evident from the immigration entries in the passports of the petitioner (Annexures P-2 & P-3). The petitioner was not aware about the proceedings of FIR (*supra*), as he is residing abroad. Since bailable/non-bailable warrants were not served upon the petitioner, he could not appear before learned trial Court and on account of his non-appearance, learned trial Court, vide impugned order dated 23.12.2014 (Annexure P-8), declared the petitioner as proclaimed offender and the intimation was further sent to SHO concerned to facilitate him to lodge an FIR against the proclaimed offender for commission of offence under Section 174-A of IPC. Aggrieved by the impugned order (Annexure P-2), the petitioner has approached this Court by way of instant petition.

5. Learned counsel for the petitioner submits 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 offender on 23.12.2014. 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***.

6. Notice of motion.

7. Mr. Sandeep Kumar, DAG, Punjab, who is present in Court,



accepts notice on behalf of respondent No.1-State and 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, 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

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therewith cannot be cured as an 'irregularity' and renders the proclamation and proceedings subsequent thereto a nullity.

11. Keeping in view the aforementioned facts and circumstances of the case, present petition is allowed and the impugned order dated 23.12.2014 (Annexure P-8), vide which the petitioner was declared proclaimed offender as well as all the consequential proceedings emanating therefrom, are hereby set aside.

12. The petitioner is directed to appear before learned 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/surety bonds to the satisfaction of learned trial Court, along with costs of Rs.15,000/- to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

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

[HARPREET SINGH BRAR]
JUDGE

11.09.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No