



118

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-44976-2024 (O&M)  
Date of decision: 11.09.2024

Vijay Kumar

... Petitioner

Vs.

State of Punjab and another

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Deepinder Singh Walia, Advocate  
for the petitioner.

\*\*\*\*\*

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for quashing of the order dated 24.08.2023 (Annexure P-2) passed by learned Judicial Magistrate 1<sup>st</sup> Class, Ludhiana, vide which the petitioner was declared as proclaimed offender in FIR No.30 dated 02.04.2023 under Sections 406 & 498-A of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Ladhawal, 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 15.02.2017 according to Sikh rites and rituals. After some time of the marriage, the



petitioner and his family members started harassing her on account of demand of dowry and on the basis of complaint made by respondent No.2-complainant against the petitioner and his family members, FIR (*supra*) was registered only against the petitioner. Since bailable/non-bailable warrants could not be served upon the petitioner, he did not appear before learned trial Court and on account of his non-appearance, learned trial Court, vide impugned order dated 24.08.2023 (Annexure P-2), 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.

3. 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 24.08.2023. 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. Notice of motion.



5. 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.

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.

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. Keeping in view the aforementioned facts and circumstances of the case, present petition is allowed and the impugned order dated 24.08.2023 (Annexure P-2), vide which the petitioner was declared proclaimed offender as well as all the consequential proceedings emanating therefrom, are hereby set aside.

10. The petitioner is directed to appear before learned trial Court within a period of two 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.10,000/- to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

11. 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  
*vishnu*

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No