



Learned counsel for the petitioners submits that the order dated 24.04.2017 (Annexure P-2) vide which petitioner No.1 has been declared as proclaimed person has been passed by the learned trial Court without following the drill of Section 82 Cr.P.C.

Notice of motion for 04.11.2024.

At this stage, on the asking of the Court, Mr. Sandeep Kumar, DAG, Punjab accepts notice on behalf of respondent No.1-State. Copy of the paper book be supplied to him during the course of day. Learned counsel for the petitioners undertakes to secure the presence of respondent No.2 before the learned trial Court at the time of recording the statement.

Operation of the impugned order dated 24.04.2017 (Annexure P-2) shall remain stayed qua petitioner No.1, till the next date of hearing.

In the meanwhile, the parties are directed to appear before the learned trial Court/Illaq Magistrate within two weeks from today or any other date convenient to the trial Court/Illaq Magistrate, to get their statements recorded regarding compromise and after recording their statements, learned trial Court/Illaq Magistrate is directed to send report regarding the genuineness of compromise and also to intimate whether any PO proceedings are pending against any of the party on or before the date fixed.

A copy of the order be sent to learned trial Court/Illaq Magistrate through fax for compliance.”

3. In compliance of the aforesaid order, a report has been received from the concerned jurisdictional Court that the compromise between the parties is genuine and arrived at without any pressure or coercion from anyone.

4. Learned counsel for the petitioners submits that petitioner No.1 was not in India during the relevant period. Therefore, he was never served and was declared proclaimed offender without following the drill of Section 82 Cr.P.C.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, the matter is taken up for final disposal.



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. A perusal of the impugned order dated 24.04.2017 (Annexure P-2) reveals that the trial Court issued proclamation without recording reasons of its belief that petitioner No.1 has absconded or is concealing themselves. 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 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.

8. The sole purpose of issuance of non-bailable warrants or issuance of proclamation is to secure presence of the accused before the trial Court. Petitioner No.1 in the present case has himself come forward and has undertaken to appear before the trial Court on each and every date.

9. In view of the compromise and the ratio of law laid down by the Hon'ble Supreme Court in ***Narinder Singh and others vs. State of Punjab and***



another, (2014) 6 SCC 466, Ramgopal and another Vs. State of Madhya Pradesh 2021 SCC OnLine SC 834 and Shakuntala Sawhney (Mrs) Vs. Kaushalya (Mrs.) and others (1980) 1 SCC 63 and Full Bench of this Court in *Kulwinder Singh Vs. State of Punjab 2007 (3) RCR (CrL) 1052*, this petition is allowed and order dated 24.04.2017 (Annexure P-2), vide which petitioner No.1 was declared as proclaimed offender as well as FIR No.19 dated 17.04.2016 under Sections 498-A/406 of IPC registered at Police Station Women Cell, Amritsar City (Annexure P-1) and all the subsequent proceedings arising therefrom including order dated 24.04.2017 (Annexure P-2) are hereby quashed qua the petitioners.

November 04, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |