



225 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-54760-2023
Date of decision: 13.11.2024

ANUP ALIAS VICKY ALIAS ANOOP KUMAR SONI AND OTHERS
...PETITIONERS

V/S

STATE OF PUNJAB AND ANOTHER
...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Harjinder Singh, Advocate
for the petitioners.

Mr. Durgesh Garg, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. Prayer in the present petition filed under Section 482 of Code of Criminal Procedure is for quashing of impugned order dated 17.11.2022 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Jalandhar in case bearing FIR No.150 dated 03.12.2021 registered under Sections 363, 366-A, 120-B of IPC at Police Station Maqsudan, District Jalandhar, whereby the petitioners have been declared as proclaimed offenders.

2. Brief facts of the case as alleged are that on 01.12.2021, Raman *alias* Deepa son of petitioner No.1 in connivance with the petitioners enticed away the prosecutrix on the pretext of marriage. Hence, the FIR (*supra*) was registered.

3. Learned counsel for the petitioners *inter alia* contends that the son of petitioner No.1 and daughter of the complainant eloped and performed marriage. Both of them are cohabiting together as husband and wife. The petitioners are parents and brother of main accused namely, Ramandeep Soni



alias Deepa, who has approached this Court by way of filing a petition bearing CRM-M No.1609 of 2024 and as per the order passed by this Court on 27.05.2024, the FIR (*supra*) was quashed along with all the subsequent proceedings on the basis of compromise dated 05.08.2023. It is further 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.

4. Learned counsel for the petitioners further submits that a compromise has also been effected between the parties.

5. Learned State counsel has filed status report dated 12.11.2024 by way of an affidavit of Surinderpal, PPS, Deputy Superintendent of Police, Sub Division Kartarpur, District Jalandhar (Rural) on behalf of respondent No.1-State in compliance of order dated 02.11.2023, which is taken on record. He 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.

6. Mr. Paras Khindri, Advocate has put in appearance on behalf of respondent No.2 and filed his *vakalatnama* which is taken on record. Registry is directed to tag the same at the appropriate place. Learned counsel for respondent No.2 affirms the factum of compromise between the parties and he has no objection, in case the impugned order is set aside.

7. 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.



8. 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.

9. A perusal of the impugned order reveals that the trial Court issued proclamation without recording reasons of its belief that the petitioners have 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.

10. 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 a compromise has also been effected between the parties.

11. In view of the aforesaid facts and circumstances and in view of the ratio of law laid down in ***Major Singh @ Major (supra)***, the present petition is



allowed and the impugned order dated 17.11.2022 (Annexure P-3), vide which, the petitioners were declared proclaimed offenders is quashed.

12. The petitioners are directed to appear before the trial Court within a period of 01 week from today and on their doing so, they shall be admitted to bail on their furnishing bail bonds and surety bonds to the satisfaction of the trial Court.

13. A copy of this order be sent to the trial Court through e-mail/fax for intimation and necessary compliance.

November 13, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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