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

CRM-M-57254-2023

Date of decision: 12.02.2024

Satwinder Pal

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ketan Chopra, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of FIR No.0166 dated 05.08.2022 under Section 174-A of IPC registered at Police Station Sarabha Nagar, Ludhiana and further to quash order dated 16.07.2022 (Annexure P-2) vide which the petitioner was declared as proclaimed person and all subsequent proceedings arising therefrom.

2. Status report by way of affidavit of Sh. Murad Jasvir Singh Gill, PPS, Assistant Commissioner of Police (West), Ludhiana, has been filed on behalf of the respondent-State and the same is taken on record.

3. Brief facts of the case are that on 19.03.2019, the complainant filed complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act') against the petitioner before the learned trial Court. It is further alleged that the present FIR is a result of non-appearance of the petitioner before the trial Court and the trial Court has initiated P.O. proceedings against

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him by observing that he is concealing himself and avoiding his arrest and ultimately declared him proclaimed person vide order dated 16.07.2022 (Annexure P-2) and the above mentioned FIR got registered against him. Aggrieved by the same, the petitioner has approached this Court by way of instant petition.

4. Learned counsel appearing for the petitioner submits that the impugned order is liable to be set aside on the ground that the mandate of Section 82 Cr.P.C. has not been followed in its letter and spirit by the trial Court. First of all, in the eventuality of non-appearance of the petitioner, the Court ought to have issued warrants to secure his presence and thereafter, issued the proclamation by recording reasons on the basis of which it believed that the person against whom the warrant issued, has absconded or concealed himself to avoid execution of warrant. However, in the present case, without making an attempt to secure presence of the petitioner by issuing warrants, petitioner was declared as proclaimed person on 16.07.2022 (Annexure P-2), as result of which, an FIR under Section 174-A of IPC was got registered against him. In support of his arguments, 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***.

5. Notice of motion.

6. Mr. Subhash Godara, Addl.A.G., Punjab, who is present in Court accepts notice on behalf of the respondent and supports the order passed by the learned trial Court by contending that the petitioner did not put in appearance

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before the trial Court intentionally and deliberately and, therefore, having left with no other option, proclamation was issued to secure his presence.

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. As far as possible, presence of the accused in the eventuality of his non-appearance ought to be secured by issuing summons or bailable warrants and non-bailable warrants/proclamation should not generally be issued. A perusal of the impugned order reveals that the trial Court without issuing summons or bailable warrants straight away issued proclamation, much less, 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; 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. In the judgment passed by this Court in ***Sonu's case*** (supra), it has been held that prior issuance of warrant of arrest by the Court is *sine qua non* for issuance and

publication of the proclamation and the Court has to first issue warrant of arrest against the person concerned. 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. Learned State counsel very fairly concedes that the matter between the parties has been compromised. The learned trial Court has recorded the statement of the complainant on 29.07.2023 (Annexure P-4) with regard to the compromise effected with the petitioner.

11. The question which arises for consideration of this Court is whether on account of withdrawal of the complaint under Section 138 of the Act on the basis of compromise, the impugned order dated 16.07.2022 and FIR under Section 174-A deserve to be quashed?

12. The stand of learned counsel representing the petitioner is that the petitioner has been declared a proclaimed person in contravention of the prescribed procedure under Section 82 of the Code of Criminal Procedure. The petitioner was never served before the proclamation was issued under Section 82 Cr.P.C. Both the parties have settled the matter amicably. In the factual backdrop of this case, undisputedly, once the substantive offence already stands settled between the petitioner and the complainant, the impugned order dated 16.07.2022 and FIR under Section 174-A would be of no consequence.

13. Reliance in this regard has been placed upon various pronouncements on the issue involved in the present case. In **CRM-M-43813-2018, Baldev Chand Bansal vs. State of Haryana and another, decided on**

29.01.2019, Vikas Sharma vs. Gurpreet Singh Kohli and another, 2017, (3)

L.A.R. 584, Microqual Techno Limited and others Vs. State of Haryana and another, 2015 (32) RCR (CrI.) 790 and Rajneesh Khanna Vs. State of Haryana and another, 2017(3) L.A.R. 555, the Coordinate Benches of this Court in identical circumstances, has held that since the main complaint filed under Section 138 of the Act stands withdrawn in view of an amicable settlement between the parties, therefore, the impugned order and consequent FIR under Section 174-A IPC would be of no use.

14. A Coordinate Bench of this Court in **Vikas Gupta vs. State of Haryana and others**, while quashing the FIR under Section 174-A of the IPC in **CRM-M-19636-2018** decided on 01.08.2018 has observed the following:-

“The ultimate aim, objective and goal of a legal system is to reconcile the social conflicts. Law is required only to ensure that people do not have to fight with each other just to protect their right to property, right to life and liberty and other rights secured to them by the legal system. The civil disputes are the conflicts between two parties, having lesser overtones for the social order, social harmony or the society as such. Hence absolute freedom is given to the parties to settle their disputes by compromises, of course, coming with certain legal consequences as well. However, the criminal disputes do not necessarily restrict themselves to only two parties to the dispute in terms of their scope, consequences and effect. The criminal acts tend to cast their effect and consequences even upon the society at large. Therefore, the law prescribes punishment, severe punishments and the extreme punishments, including death penalty for criminal acts.”

15. Learned counsel representing the State has not been able to controvert the aforesaid facts and the position of law as laid down in the aforesaid judgment.

16. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 16.07.2022 (Annexure P-2)

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vide which the petitioner was declared proclaimed person as well as FIR No. 0166 dated 05.08.2022 under Section 174-A of IPC are hereby set aside subject to payment of Rs.10,000/- as costs to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

12.02.2024

Neha

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