

CRM-M-55919-2023
Date of decision: 27.02.2024

Puleen Kaur BhinderPetitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. R.S. Randhawa, Advocate
for the petitioner.

Mr. Subhash Godara, Addl.A.G., Punjab.

Mr. S.S. Kang, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 01.04.2023 (Annexure P-1), whereby the petitioners has been declared as proclaimed offender in case bearing FIR No.117 dated 27.07.2021 (Annexure P-2) under Sections 406/420/506/120-B of IPC registered at Police Station Dugri, District Police Commissionerate Ludhiana and all other subsequent proceedings arising therefrom.

On 23.11.2023, the following order was passed:-

‘...By way of present petition, petitioner has assailed the order dated 01.04.2023, Annexure P1, whereby she has been declared as a Proclaimed Offender.

By making a reference to the passport, Annexure P3, counsel for the petitioner submits that petitioner left India on 30.08.2018 and has not visited her home country thereafter. He urges that FIR, Annexure P2 has been lodged by her husband – respondent No.2 in her absence and despite the fact that it was specifically mentioned in the FIR, Annexure P2 that the petitioner is abroad, no attempt was made to serve her through the Ministry of External Affairs. He contends that procedure prescribed under Section 82 Cr.P.C. has been

violated and the impugned order deserves to be set aside. Still further, he submits that the petitioner, who is in USA is prepared to join the proceedings through the medium of video conferencing as the matrimonial dispute stands amicably settled. He asserts that settlement was arrived at during the pendency of a petition seeking quashing of the FIR on merits and by order dated 17.11.2023, petitioner was permitted to withdraw the said petition with liberty to file a separate petition on the basis of settlement.

Advance copy of the petition has been served upon State.

Noticing the nature and allegations levelled against the petitioner as well as subsequent developments, petitioner is directed to surrender before the trial Court through virtual means within a fortnight from today and move an appropriate application. On her doing so, the trial Court shall release her on bail on furnishing of bail/surety bonds to its satisfaction.

List on 27.02.2024.'

In compliance of the aforementioned order, the petitioner has appeared before the learned trial Court on 30.11.2023 and, thereafter, the FIR (*supra*) was quashed on the basis of compromise by this Court vide order dated 15.02.2024 passed in CRM-M-63752-2023 titled as 'Inderpal Singh Dhaliwal and others Vs. State of Punjab and another.' Admittedly, when the impugned order was passed, the petitioner was living abroad and no effort was made to serve her through the Ministry of External Affairs as per the procedure under Section 82 Cr.P.C.

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.

In view of the aforesaid facts and circumstances, the present petition is allowed and order dated 01.04.2023 (Annexure P-1) vide which the petitioner was declared as proclaimed offender is hereby set aside.

(HARPREET SINGH BRAR)
JUDGE

27.02.2024
Neha

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