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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-55646 of 2023 (O&M)

Date of Decision: February 15, 2024

Darshan Singh

.....Petitioner

versus

Sukhdev Singh

.....Respondent

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Karanjeet Singh Brar, Advocate
for the petitioner

Harpreet Singh Brar, J. (Oral)

CRM-3926-2024

The present application has been filed for placing on record
Annexure P-4.

For the reasons recorded in the application, the same is allowed.
Annexure P-4 is taken on record subject to all just exceptions.

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1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of impugned order dated 05.10.2021 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Jalalabad, District Fazilka vide which the petitioner was declared as proclaimed offender in criminal complaint No. NACT 591 of 2017 dated 18.12.2017 (Annexure P-1) titled as *Sukhdev Singh vs. Darshan Singh* filed under Section 138 of the Negotiable Instruments Act.
2. Brief facts of the case are that respondent/complainant filed a criminal complaint against the petitioner with the allegations that to discharge the legal liability, the petitioner issued a cheque No.799984 dated 14.11.2017 for

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Rs.1,10,000/- but the same cheque was dishonoured with remarks "Drawer signatures differs". Thereafter the respondent/complainant sent legal notice but no reply has been given by the petitioner and resultantly respondent/complainant filed a criminal complaint against the petitioner. The petitioner petitioner was not aware regarding the complaint filed by the respondent/complainant against him. Later on, the proclamation of the petitioner has been issued but due to pandemic situation of COVID-19, service was not effected to the the petitioner and he could not appear before the learned trial Court.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner was never served with the legal notice as well as summons and proclamation and the petitioner does not have any intention of not appearing before the trial Court. Vide order dated 05.10.2021 (Annexure P-2), the petitioner has been declared as proclaimed offender.

4. 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 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.

5. A perusal of the impugned order reveals that the trial Court issued proclamation 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

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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.

6. 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 petitioner in the present case has himself come forward and has undertaken to appear before the trial Court on each and every date.

7. In view of the aforesaid facts and circumstances, the present petition is allowed, without issuing notice to the private respondent in order to save time of the Court and to avoid litigation expenses to be incurred on the part of the respondent, the impugned order dated 05.10.2021 (Annexure P-2) vide which the petitioner was declared proclaimed offender is set aside.

8. The petitioner is directed to appear before the trial Court within a period of 15 days from today and on his doing so, he shall be admitted to bail on his furnishing bail bonds and surety bonds to the satisfaction of the trial Court, along with costs of Rs.10,000/- to be deposited with the District Legal Services Authority, Fazilka, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

February 15, 2024

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No