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IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-62224-2023 (O&M)

Date of Decision: 20.08.2024

BALBIR SINGH ALIAS PHIRI ALIAS KASHMIR

...Petitioner

V/S

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vijay Lath, Advocate and
Mr. Naveen Sharma (Moudgil), Advocate for the petitioner.

Mr. Sandeep Kumar, DAG Punjab.

HARPREET SINGH BRAR J. (Oral)

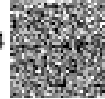
1. Present petition has been filed under Section 482 of Cr.P.C. seeking issuance of directions to respondents for deleting the entry made in their record regarding declaring the petitioner as proclaimed offender in case bearing FIR No. 95 dated 07.12.1991 (Annexure P-1) registered under Sections 363, 366 and 376 (added later on) of Indian Penal Code at Police Station Adampur, District Jalandhar (Rural), Punjab.

2. On 09.05.2024, following order was passed:

“Heard.

Status report filed by learned State counsel has been taken on record.

The report sent by the Judicial Magistrate First Class, Jalandhar forwarded by District and Sessions Judge, Jalandhar has been perused, as per which, the case arising out of FIR No. 95 dated 07.12.1991 titled as ‘State Vs. Charanjeet Singh’ had been committed to the Court of Sessions vide order dated 20.07.2010 by the then Additional Chief Judicial Magistrate, Jalandhar Ms. Gurmeet Kaur wherein it was mentioned that the present petitioner and other accused were declared proclaimed offenders and that as per order dated 06.07.2010 passed by the Court of Learned Additional Sessions Judge, Jalandhar, file had been reconstructed with the help of the documents contained in police file in the Court. It is also mentioned in this



order dated 20.07.2010, that carbon copies of the police file had been attached with the file of the case which was committed to the Court of Sessions. As per the police record, the present petitioner had been declared a proclaimed person, whereas according to the petitioner, he never received notice of the above said FIR. Therefore, in order to elicit the correctness of the entries recorded with the police department as to declaration of the petitioner as a proclaimed offender, it is required that the proceedings which were initiated by the concerned Court at the relevant time for declaring the petitioner as a proclaimed offender must come on record. The learned District Sessions Judge, Jalandhar has simply forwarded the report of the Judicial Magistrate without going into the details thereof. As such, direction is given to the learned District and Sessions Judge, Jalandhar to look into the matter personally and to confirm from the file of the case bearing FIR No. 95 dated 07.12.1991, as to whether, any order for declaring the present petitioner as proclaimed offender has been passed on 04.07.1995 or not and to initiate proper action, if such, record is found to have gone missing or non traceable. The copy of order dated 20.07.2010 which has been tagged and forwarded by learned District and Sessions Judge as well as another copy of the judgment dated 03.09.2010 passed in Sessions Case No. 70/2010 passed by Sh. Harjinder Pal Singh, Additional Sessions Judge, Fast Track Court, Jalandhar be also sent to him for the purpose of filing of the report in the matter.

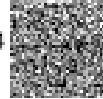
The learned District and Sessions Judge shall make best endeavor to clarify the position that whether the present petitioner was declared as a proclaimed offender in the aforementioned FIR at all or not and as to where the concerned record has gone, if not traceable.

Report be awaited for 28.05.2024.

In the meanwhile, no coercive action shall be taken against the petitioner.”

3. Thereafter, report of District and Sessions Judge, Jalandhar was called. On 28.05.2024, following order was passed:

“Report has been received from the learned District Sessions Judge, Jalandhar, as per which, the record pertaining to the proceedings whereby the present petitioner was declared as a proclaimed offender has been lost and cannot be submitted. It is also submitted by him that an inquiry has been initiated in the matter and direction has been given to fix the



responsibility of the official at fault and to reconstruct the lost record from all available sources within one month.

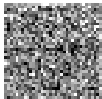
In view of the report, it is clear that at this stage, no record pertaining to declaration of present petitioner as a proclaimed offender is available. The petitioner cannot be made to suffer because of this fact. Therefore, to meet the ends of justice, the direction is hereby given to him to appear before the concerned Court on or before 15.07.2024 and it is further directed that on his surrender, he will be admitted to interim bail by the concerned Court subject to petitioner's furnishing personal and surety bonds to its satisfaction. The arrest of the petitioner shall remain stayed till the date of his surrender before the trial Court.

Report of the trial Court be awaited for 20.08.2024."

4. Learned counsel for the petitioner submits that in compliance of the order passed by this Court on 28.05.2024, he has surrendered before the learned trial Court and has furnished the bail bonds and surety bonds to its satisfaction and further submits that petitioner has been wrongly declared as proclaimed offender without following the drill of Section 82 of Cr.P.C.

5. Further the report of District and Sessions Judge, Jalandhar, clearly indicates that no record of declaring the petitioner as proclaimed offender is traceable in the record room.

6. 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 vs. State of Haryana 2021 (1) RCR (Cri.) 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 in nature. Any non-



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proclamation as nullity. Once the impugned order passed under Section 82 Cr.P.C. is found to be suffering from an incurable illegality, the order vide which the proclamation was issued would be liable to be set aside.

7. In view of the aforesaid judgments, the petitioner cannot be held liable in any manner as he was residing abroad during the interrigenum period and now he has joined the proceedings and has been declared proclaimed offender without following the drill of Section 82 of Cr.P.C.

8. The object and purpose of issuing 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. Moreover, petitioner has already surrendered before the learned trial Court and in compliance of the directions issued by this Court on 28.05.2024.

9. In view of the aforesaid facts and circumstances, the impugned order, if any, vide which the petitioner was declared proclaimed offender is set aside and the instant petition stands disposed of in above terms.

20.08.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No