

CRM-M-59355-2024 (O&M)
Date of decision: 29.11.2024

...PETITIONER

STATE OF PUNJAB AND ANOTHER

...RESPONDENTS

Present: Ms. Taanvi Dhull, Advocate for
Mr. Namish Sodhi, Advocate
for the petitioner.

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

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 seeking quashing of order dated 08.12.2015 (Annexure P-6) passed by the learned Judicial Magistrate Ist Class, Amritsar vide which petitioner was declared as proclaimed person in the case stemming from FIR No.29 dated 25.02.2012 registered under Sections 498-A and 406 IPC at Police Station Chherretta, District Amritsar as well as FIR No. 205 dated 03.09.2016 registered under Section 174-A of IPC at Police Station Chherretta, District Amritsar and all proceedings emanating therefrom.

2. Learned counsel for the petitioner contends that the petitioner is the brother-in-law of respondent No.2, on whose complaint FIR bearing No. 29 (supra) was registered. The petitioner was exonerated on investigation but subsequently summoned under Section 319 of Cr.P.C. The petitioner had approached this Court previously by filing CRM-M-33712-2015 wherein vide order dated 20.08.2024 (Annexure P-15), the order summoning the petitioner



as an additional accused under Section 319 Cr.P.C. in FIR No.29 (supra), was quashed. However, the petitioner was declared proclaimed person vide impugned order dated 08.12.2015. The co-accused of the petitioner i.e. the parents-in-law and the husband of the daughter of the complainant have already been acquitted by learned trial Court in the case stemming from FIR No.29(supra). Furthermore, a compromise has been effected between respondent No. 2 and her husband i.e. brother of the petitioner, which is available on record as Annexure P-11. In furtherance of the same, they had filed a joint petition before the learned Principal Judge, Family Court, Amritsar under Section 13-B of Hindu Marriage Act, 1955, seeking a decree of divorce by way of mutual consent. The same was granted vide judgment dated 21.09.2023 (Annexure P-12).

3. Learned counsel further contends that on account of his non-appearance, the trial Court declared the petitioner as proclaimed person vide order dated 08.12.2015 (Annexure P-6) and the intimation was further sent to SHO concerned to facilitate him to lodge an FIR against him for commission of offence under Section 174-A IPC. It is contended that the impugned order dated 08.12.2015 in FIR No.29(supra) as well as the FIR No. 205(supra) under Section 174-A IPC are 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. In support of his arguments, learned 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***.

4. Notice of motion.

5. Mr. Subhash Godara, Addl. A.G., Punjab, who is present in Court,



accepts notice on behalf of respondent-State and supports the impugned order dated 08.12.2015(Annexure P-6) in FIR No.29(supra) passed by the learned trial Court as well as the registration of FIR No.205(supra) by contending that the petitioner intentionally and deliberately failed to put in appearance before the trial Court. Therefore, being left with no other option, the proclamation was issued to secure his presence.

6. 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.

7. 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.

8. This Court in ***Major Singh @ Major Vs. State of Punjab 2023 (3) RCR (Criminal) 406*** has held that the Court is required to record its satisfaction before issuance of process under Section 82 Cr.P.C. and non-recording of such satisfaction itself makes inflicts an incurable illegality ipon the said order. The procedure specified in Section 82(2) Cr.P.C. for the publication of a proclamation against an absconder is mandatory in nature. Any non-compliance thereof cannot be cured subsequently and renders the proclamation and proceedings subsequent thereto a nullity.

9. It appears that the petitioner was not served before issuance of the proclamation under Section 82 Cr.P.C. Moreover, the couple has settled the

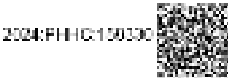


matter amicably, which has resulted acquittal of co-accused i.e. parents and brother of the petitioner in FIR No. 29(supra). Undisputedly, once the substantive offence already stands settled between the brother of the petitioner and respondent No. 2, the impugned order dated 08.12.2015 (Annexure P-6) as well as other subsequent proceedings arising therefrom would be of no consequence.

10. Since the matter, pertaining to FIR No.29(supra), from which all other proceeding emanated, stands compromised and the couple has obtained a divorce on mutual consent under Section 13-B of the Hindu Marriage Act, 1955, it would be unreasonable to continue proceedings under Section 174-A IPC. 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.”

11. Moreover, where the Court decides to proceed against the accused for an offence under Section 174-A IPC, it is imperative to institute a formal written complaint in the competent jurisdictional court. This imperative arises



from the provision of Section 195 Cr.P.C. (continued as Section 215 BNSS) which mandates that no Court shall take cognizance of any offence punishable under Sections 172 to 188 IPC (both inclusive) except on a complaint in writing by the public servant concerned or by some other public servant to whom he is administratively subordinate as has been held by this Court in *Pardeep Kumar vs. State of Punjab and another, CRM-M-41656-2023* decided on 23.08.2023.

12. Learned State counsel concedes that the matter between the parties has been compromised and decree of divorce has been granted by the concerned Court. However, he has been unable to controvert the aforesaid facts and the position of law as laid down in the judgments referred to hereinabove.

13. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 08.12.2015 (Annexure P-6) vide which the petitioner was declared proclaimed person in FIR No.29(supra) as well as FIR No. 205 dated 03.09.2016 registered under Section 174-A IPC at Police Station Chherreta, District Amritsar and all the consequential proceedings emanating therefrom, are hereby quashed qua the petitioner.

14. Pending miscellaneous application(s), if any shall also stand disposed of.

November 29, 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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