

CRM-M-65274-2023
Date of decision: 04.01.2024

Jagjit Singh DeolPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amandeep Singh Rai, Advocate
for the petitioner.
Mr. Subhash Godara, Addl.A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the summoning order dated 06.12.2004 (Annexure P-6) passed by the learned Judicial Magistrate 1st Class, Barnala, whereby, the petitioner was summoned under Section 319 Cr.P.C. for facing trial under Sections 323/324/427/506 of IPC in case bearing FIR No.55 dated 11.10.2001 registered at Police Station Mehal Kalan, District Barnala and further seeking quashing of order dated 08.07.2005 (Annexure P-7) passed by the learned Judicial Magistrate 1st Class, Barnala, whereby, the petitioner was declared as proclaimed offender.

2. Learned counsel for the petitioner wishes to withdraw his prayer with regard to the quashing of summoning order dated 06.12.2004 (Annexure P-6) passed by the learned Judicial Magistrate 1st Class, Barnala, vide which the petitioner was summoned under Section 319 Cr.P.C. for facing trial under Sections 323/324/427/506 of IPC in case bearing FIR No.55 dated 11.10.2001

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under Sections 323/324/427/506 of IPC registered at Police Station Mehal Kalan, District Barnala.

3. The prayer is allowed. Dismissed as withdrawn *qua* quashing of the summoning order dated 06.12.2004 (Annexure P-6).

4. Learned counsel appearing for the petitioner *inter alia* contends that the petitioner was given clean chit and declared innocent by the Investigating Agency in FIR No.55 dated 11.10.2001 under Sections 323/324/427/506 of IPC registered at Police Station Mehal Kalan, District Barnala and since, there was nothing against him, he shifted to Canada on 05.03.2004 and has never come to India. The trial of the case continued before the learned trial Court and during the pendency of the trial, father of the petitioner died. The petitioner was not aware of any of the proceedings pending before the learned trial Court as he never returned to India after 05.03.2004. It is further submitted that when the petitioner was planning to visit India, it came to his knowledge that on the statement of complainant-Hardev Singh, an application dated 25.11.2004 was filed by the prosecution under Section 319 Cr.P.C. for summoning the petitioner as an additional accused which was allowed by the learned trial Court. It is further stated that the complainant and the prosecution were well versed about the fact that the petitioner was not in India which was also mentioned in order dated 31.01.2005, yet the learned trial Court without directing the prosecution to furnish the fresh address of the petitioner, proceeded to summon him through proclamation. On 08.07.2005, the trial Court declared the petitioner as proclaimed offender. Aggrieved by the said impugned order dated 08.07.2005 (Annexure P-7), the petitioner has approached this Court by way of instant petition.

5. Learned counsel appearing for the petitioner submits that the petitioner was never served with any bailable warrants, non-bailable warrants or any proclamation as he was not in India and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Ultimately, vide impugned order dated 08.07.2005, the petitioner has been declared as proclaimed offender. It is contended that the impugned order is 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.

6. It is also submitted that the petitioner undertakes to appear before the trial Court on each and every date of hearing.

7. Notice of motion.

8. Mr. Subhash Godara, Addl.A.G., Punjab. who is present in Court, accepts notice for the respondent and supports the order passed by the learned trial Court by contending that the petitioner did not put in appearance before the trial Court intentionally and deliberately and, therefore, having left with no other option, proclamation was issued to secure his presence.

9. 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.

10. 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.

11. 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 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 (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. Any non-compliance therewith cannot be cured as an 'irregularity' and renders the proclamation and proceedings subsequent thereto a nullity.

12. 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 of hearing.

13. In view of the aforesaid facts and circumstances, the present petition is allowed. The impugned order dated 08.07.2005 (Annexure P-7) vide which the petitioner was declared as proclaimed offender is hereby set aside.

14. The petitioner is directed to appear before the trial Court within a period eight weeks from today and on his doing so, he shall be admitted to bail on his furnishing the adequate bail bonds and surety bonds to the

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satisfaction of the trial Court, along with costs of Rs.10,000/- to be deposited with the District Legal Services Authority, Barnala, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

04.01.2024
Neha

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