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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-10711-2024

Date of decision: 29.02.2024

Vikas Kumar

....Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vivek Sharma Vats, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The prayer in the present petition under Section 482 Cr.P.C. seeking quashing of impugned order dated 17.08.2023 (Annexure P-1) passed by the learned Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhri in complaint No. NIA/2618/2019 dated 08.11.2019 vide which the petitioner has been declared as proclaimed person as well as consequential proceedings arising therefrom including FIR No.275 dated 16.09.2023 under Section 174-A of IPC registered at Police Station Sector 17, HUDA, Jagadhri (Annexure P-2).

FACTUAL BACKGROUND

2. Brief facts of the case are that M/s Sharp Engineering had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the Act') against the petitioner before the learned trial Court. It is further alleged that the FIR (*supra*) is a result of non-appearance of the petitioner before the trial Court and the trial Court has initiated P.O. proceedings against him by observing that he is concealing himself and avoiding his arrest and

ultimately declared him proclaimed person vide order dated 17.08.2023 (Annexure P-1) and the above mentioned FIR was registered against him. Aggrieved by the same, the petitioner has approached this Court by way of instant petition. Allegedly, due to outbreak of pandemic COVID-19, the case was adjourned on number of occasions. Thereafter, on 17.11.2022, fresh bailable warrants in the sum of Rs.10,000/- with one surety in the like amount were issued against the petitioner for 30.03.2023. On 29.03.2023, the case was adjourned for 06.05.2023. On 06.05.2023, presence of the accused/petitioner was secured through issuance of bailable warrants for 02.06.2023. On 02.06.2023, on account of receipt of report regarding bailable warrants issued against the accused received back unserved/unexecuted, the trial Court issued proclamation under Section 82 of Cr.P.C. against the petitioner. On 17.08.2023, the trial Court declared the petitioner as proclaimed person. Aggrieved by the said impugned order dated 17.08.2023 (Annexure P-1), the petitioner has approached this Court by way of instant petition.

CONTENTIONS

3. Learned counsel for the petitioner submits that the bailable warrants issued to the petitioner were never served and, therefore, the finding of the trial Court that the petitioner is intentionally evading his arrest, is erroneous. Ultimately, vide order dated 17.08.2023 (Annexure P-1), the petitioner has been declared as proclaimed person and consequently, an FIR under Section 174-A of IPC was registered against him. It is further contended that the above said impugned order as well as FIR are liable to be set aside on the ground that the mandate of Section 82 (1) of Cr.P.C. has not been followed in its letter and spirit by the trial Court as the proclamation was not read publicly in some

conspicuous place of the village/town of the petitioner neither it was published in any newspaper circulating at his place of residence.

4. It is further submitted that the FIR (supra) warrants quashing on the basis that as per Section 195 Cr.P.C, the FIR (supra) cannot be registered for offence punishable under Section 174-A IPC and rather a criminal complaint had to be filed by the learned Magistrate in the jurisdictional Court. He places reliance on a decision rendered by a Co-ordinate bench of this Court in ***Pardeep Kumar vs. State of Punjab, CRM-M-41656-2023*** decided on 23.08.2023.

5. Notice of motion.

6. Ms. Geeta Sharma, DAG, Haryana, who is present in Court accepts notice on behalf of 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.

OBSERVATION & ANALYSIS

7. 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.

8. At the outset, it is important to discuss the scope of Section 195 of the Code of Criminal Procedure. A perusal of the same shows that where an offence under Section 174-A of IPC is concerned, its cognizance cannot be taken by any Court except on the complaint in writing of the public servant/Judge concerned or of some other public servant/Judge to whom he is administratively subordinate. Therefore, in the present case, the learned Magistrate should have instituted a complaint in writing in the competent jurisdictional Court.

9. Invariably, 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.

10. As far as possible, presence of the accused in the eventuality of his non-appearance ought to be secured by issuing summons or bailable warrants and non-bailable warrants/proclamation should not generally be issued. A perusal of the impugned order reveals that the trial Court issued the 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 Cr.P.C. and non-recording of the satisfaction itself makes such order suffering from incurable illegality.

11. The stand of learned counsel representing the petitioner is that the petitioner has been declared a proclaimed person in contravention of the prescribed procedure under Section 82 of the Code of Criminal Procedure. The petitioner was never served before the proclamation was issued under Section 82 Cr.P.C.

12. Learned counsel representing the State has not been able to controvert the aforesaid facts and the position of law as laid down in the

aforesaid judgment.

CONCLUSION

13. In view of the aforesaid facts and circumstances, the present petition is allowed and the impugned order dated 17.08.2023 (Annexure P-1) vide which the petitioner was declared proclaimed person as well as FIR No. 275 dated 16.09.2023 under Section 174-A of IPC are hereby set aside subject to payment of Rs.10,000/- as costs to be deposited with the Poor Patient Welfare Fund, PGIMER, Chandigarh, for wasting precious time of the Court.

(HARPREET SINGH BRAR)
JUDGE

29.02.2024
Neha

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