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Darshan Singh Vs. State of Punjab

Present: Mr. Sandeep Sharma, Advocate
for the petitioner.

Mr. Mohit Thakur, AAG, Punjab.

The petitioner has approached this Court under Section 482 Cr.P.C. for quashing of order dated 15.07.2008 (Annexure P-2) passed by the learned Judicial Magistrate 1st Class (D), Amritsar in FIR No.17 dated 27.01.2004 under Sections 419, 420, 468, 471 IPC registered at Police Station Raja Sansi, Amritsar Rural, District Amritsar.

Counsel for the petitioner contends that after registration of the FIR, final report under Section 173 Cr.P.C. was presented against the petitioner on 08.04.2004 and charges were framed. The petitioner did not appear before the learned trial Court on 05.10.2006 and arrest warrants were issued against him to secure his presence. It is contended that vide order dated 03.12.2007 passed by the learned trial Court, the petitioner was ordered to be summoned through proclamation for 24.01.2008. The alleged proclamation has not been issued by the learned trial Court in compliance of provisions of Section 82 Cr.P.C., according to which 30 days time is to be given to appear from the date of publication of such proclamation. As the said proclamation was received back as unexecuted, the same was issued again for 17.04.2008 and thereafter for 15.07.2008, on which date, vide impugned order, the petitioner was declared as proclaimed offender and intimation in this regard was sent to the concerned SHO. The matter was thereafter fixed for 22.08.2008 for prosecution evidence under Section 299 Cr.P.C. As the proclamation issued by the learned trial Court does not fulfill

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the mandate of Section 82 Cr.P.C, therefore, the impugned order is liable to be set aside. It is further contended that the petitioner is ready to appear before the Court and join proceedings of the Court on each and every date.

Notice of motion.

Mr. Mohit Thakur, AAG, Punjab, who is present in Court, accepts notice and seeks time to file reply.

The conspicuous facts of the case have pricked the conscience of this Court. The petitioner has not even made a feeble attempt to show sufficient cause to explain the delay in challenging the impugned order dated 15.07.2008 (Annexure P-2). The petitioner has been able to evade the process of law for more than 15 years. It is not fathomable how an accused even after issuance of the order of proclamation is allowed to remain scot free. If any person is allowed to evade his presence during the trial in this fashion, it would not only suffocate the rights of the victim and the society but would also render the entire criminal justice administration ineffective. It also creates dent in the competence and efficacy of law enforcement agencies, which allowed the accused to remain absconding from the process of law for 15 long years without taking recourse to attachment of property of the person absconding under Section 83 Cr.P.C and initiating action under Section 174A IPC. The attachment of property under Section 83 Cr.P.C. is a significant component of criminal justice administration, which allows the jurisdictional police authorities to ensure the presence of the accused during the legal process. In the present case, surprisingly no application under Section 83 Cr.P.C. was filed before the concerned Court for obtaining necessary directions for attachment of property of the accused person, who absconded and concealed himself from the process of law for 15 long years. The

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primary purpose of attachment of the property under Section 83 Cr.P.C. is to prevent the accused from absconding or evading the process of law. It is a critical tool to ensure the presence of the accused during trial and also relevant in cases where the accused has been found guilty and he has been ordered to pay a fine or compensation to the victim or the State.

It is a trite law that the attachment of property is intended to be preventive in nature so that the accused does not dispose or part with the property and remains available for being dealt with in accordance with law during the trial before the court.

The peculiar facts and circumstances of the present case compel this Court to issue necessary directions to the police authorities to take recourse to the provisions of Section 83 Cr.P.C. and Section 174A IPC. In order to issue necessary directions in this regard, relevant information is required to be obtained from the respondent-State.

As such, the Commissioner of Police, District Amritsar and the Senior Superintendent of Police, Amritsar (Rural) are directed to furnish year wise details of last 15 years by specifically indicating the following by way of affidavit within a period of three weeks from today:-

- (i) Number of persons declared proclaimed offenders each year for the last 15 years.
- (ii) Number of persons arrested and produced before the jurisdictional courts after being declared proclaimed offender.
- (iii) Number of cases wherein proceedings under Section 83 Cr.P.C. were initiated at the behest of State seeking

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direction from the court concerned to attach the property of the proclaimed offender/person.

- (iv) Number of cases wherein action has been taken by the State to initiate proceedings pursuant to issuing of proclamation order under Section 174A IPC.
- (v) Whether any special cell has been constituted or periodic exercise was undertaken to arrest accused persons, who have been declared as proclaimed offenders/persons.

Mr. Harkirat Singh Randhawa, Advocate, who is present in Court is appointed as *amicus curiae* to assist this Court. Registry is directed to supply a copy of complete paper book to the *amicus curiae* within a period of one week from today. The learned State counsel is also directed to supply a copy of the affidavit so furnished by the Commissioner of Police, Amritsar before the adjourned date to the *amicus curiae*.

Adjourned to 08.12.2023.

(HARPREET SINGH BRAR)
JUDGE

November 06, 2023
Pankaj*