

In the High Court of Punjab and Haryana at Chandigarh

**CRM-M No. 49283 of 2021
Date of Decision: 16.12.2021**

Gurbir Singh Mundi

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. H.S.Sandhu, Advocate for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

Mr. A.S.Sekhon, Advocate for respondent No. 2.

SURESHWAR THAKUR, J. (ORAL)

1. Through the instant petition, filed under Section 482 Cr.P.C., the petitioner seeks quashing of the order dated 03.12.2014, whereby he was declared a proclaimed offender by the learned Judicial Magistrate Ist Class, Moga, in case FIR No. 3 dated 5.2.2014 registered at NRI Moga, District Moga.

2. The learned Magistrate concerned, through an order made on 03.12.2014, hence enclosed with the petition as Annexure P-2, recorded that as per the statement of the police official concerned, the proclamation, under Section 82 Cr.P.C., against accused Gurbir Singh, became published on 01.11.2014. A reading of the afore, reveals that the executing officer went to the house of the accused, and, affixed a copy of proclamation at the gate of the house of accused, and, further that the second copy became affixed at the common place, besides the third copy became affixed at the notice board of the Court, whereas, the fourth copy was produced before the Court concerned. The learned Magistrate concerned, after considering the

afore statement, of the police official concerned, made an objective conclusion, that since the period of 30 days, has elapsed since the making of publication of proclamation, and, hence proceeded to make an order, declaring the petitioner a proclaimed person.

3. The order carried in Annexure P-2 is challenged, and, also is strived to be quashed by the petitioner, through his recouring the mandate of Section 482 of the Cr.P.C. The petitioner would succeed in his endeavour (supra) in case, upon a reading, of the statement/report of the serving/executing officer, as carried in the impugned order, and, which became depended, upon by the learned Magistrate concerned, to proceed to draw the impugned order, as, carried in Annexure P-2, suffers from a gross perversity, and, infirmity, inasmuch as its breaching the mandate of sub-Section (2) of Section 82 of the Cr.P.C. In making a determination, whether the mandate occurring in sub-Section (2) of Section 82 of the Cr.P.C. has been breached, or not, by the learned Magistrate concerned, in his making the impugned order, it becomes imperative to extract provisions thereof, provisions whereof become extracted hereinafter. Importantly so, as on a deep reading thereof(s), all the ingredients carried therein, are required to be completely complied with, both by the executing officer concerned, who made a report/statement, and, also are to be reflected, to be complied with, in the impugned order, as made by the learned Magistrate concerned. A circumspect and deepest reading, of the hereinafter extracted relevant portion of sub-Section (2), discloses that the notice of proclamation, is required to be given effect to, or is required to be peremptorily executed in the mode enshrined therein, as its salutary purpose is to bring an awakening in the persons concerned, who purportedly deliberately avoid causing of

valid service, upon him/them, for any relevant purpose, rather about the date(s) mentioned therein. Since the afore awakening, carried in sub-Section (2), would ensure that may be hence they cause his / their appearance(s) before the Court concerned, as, also hence would obviate the drawings of further stigmatic proceedings contemplated, under Section 83 of the Cr.P.C., by the Court concerned. Therefore, all the provisions carried in sub-Section (i) of sub-Section (2) of Section 82 of the Cr.P.C., are to be cumulatively complied, and, or that all the provisions carried in sub-Section (i) of sub-Section (2) of Section 82 of the Cr.P.C., require(s) theirs being meted completest conjunctive compliance by the serving / executing officer, and or that the provisions (supra) are to be not meted compliance in the alternate.

“ 82. Proclamation for person absconding.

(2) The proclamation shall be published as follows:-

- (i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;*
- (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;*
- (c) a copy thereof shall be affixed to some conspicuous part of the Court- house;*
- (ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.”*

4. Consequently, as per report/statement, as became relied, upon by the executive officer, and, as became depended upon by the learned Magistrate concerned, to make the impugned order, disclosures are to occur, that each of the ingredients carried in all the afore provisions, borne in

sub-Section (i) of sub-Section (2) of Section 82 of the Cr.P.C., became meted absolute, completest compliance, without any of them remaining uncomplied with. However, though the serving executing officer, has in his report/statement, made a disclosure that he, at the relevant time, hence affixed, one copy of the proclamation on the gate of the house of the accused, and, has also made disclosure, that one copy of the proclamation became appended, at the common place, and, besides one copy became appended on the notice board of the Court complex. However, a reading of the afore report/statement, does not disclose, that he had also, as enjoined by the provisions (supra), read it publicly in some conspicuous place of the town or village, in which the accused ordinarily resides. Since the mandate of sub-Clause (a) of sub-sub-Section (i) of sub-Section (2) of the Section 82 of the Cr.P.C., was also to be complied alongwith compliance being meted by the executing officer with Clause (b), and, Clause (c) of sub-sub-Section (i) of sub-Section (2) of Section 82, of the Cr.P.C., whereas, a reading of the apposite report/statement, not disclosing that he had also meted compliance to Clause (a) of sub-subSection (i) of sub-Section (2) of Section 82, of the Cr.P.C, thereupon, his report is in departure of the statutory injunction, as therethrough, became cast upon him.

5. Be that as it may, though the impugned order (supra), hence suffers from a vice of infirmity, and, is quashed and set aside. However, since in a petition bearing No. CRM-M-16746 of 2021, seeking quashing of FIR No. 3 of 5.2.2014, registered at Police Station NRI Moga, District Moga, on the basis of a valid compromise, drawn amongst the parties, this Court has proceeded to quash the afore FIR. Therefore, this Court is all the more, constrained to allow this petition for quashing the order dated

3.12.2014.

6. Moreover, since Gurbir Singh Mundi became declared a proclaimed offender, hence the learned trial Magistrate could not proceed to draw, the charges concerned against him, nor also could make either a verdict of acquittal or conviction upon him. Moreover, rather when the proceedings under Section 299 Cr.P.C., were to be drawn against one Gurbir Singh, upon his surrender, and, upon his making his appearance before the learned trial Magistrate concerned. However, the afore statutory provisions, may not be resorted qua co-accused Gurbir Singh, as his mother-co-accused, has been acquitted through a verdict, drawn by the learned Magistrate concerned on 19.4.2018, upon case No. 5, reiteratedly also when after recalling the order afore, hence declaring the afore, as a P.O., and, also with a compromise occurring amongst all the concerned, thereupon too, the recourse to the mandate of Section 299 Cr.P.C., by the learned trial Magistrate concerned, against co-accused Gurbir Singh, would be an exercise in futility, as there would hence be the remotest, and, bleakest chances, of any lawful verdict of conviction, becoming pronounced against him, by the learned Magistrate concerned.

7. In view of the above, the petition is allowed, and the order dated 03.12.2014, declaring the petitioner a proclaimed offender, is set aside.

8. All the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

December 16, 2021

Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes