

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

CRM-M No. 1522 of 2022 (O&M)

Date of Decision: 01.02.2022

Dikshant

..... Petitioner

Versus

The State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Dhruv Gupta, Advocate
for the petitioner.

Mr. Pradeep Prakash Chahar, Deputy Advocate General, Haryana

(Through Video Conferencing)

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner, by filing the present petition under Section 482 of the Cr.P.C., is seeking the quashing of the order of 08.07.2021, where though, the petitioner was declared a proclaimed offender, by the learned Judicial Magistrate First Class, Ambala, as also is seeking the annulment of consequent thereto FIR No. 503 of 30.11.2021 (Annexure P-5), registered against him, at the Police Station Ambala City, District Ambala.

2. Heard.

3. The petitioner is alleged to commit an offence under Section 138 of the Negotiable Instruments Act (in short "the NI Act"). An apposite complaint was filed against him, and, it stands dismissed as withdrawn, on 01.10.2021 (Annexure P-6), by the Court of JMFC Ambala. Therefore, obviously, there is no imperative necessity for the petitioner to cause his appearance before the Court concerned, nor, hence, any lawful purpose

rather survives, in taking to the extreme end, the challenged processes, as

become initiated, against the petitioner qua his wilful non-appearances, if any.

4. During the course of judicial proceedings, a perusal of the order of 25.02.2020 (Annexure P-2), as, made by the learned JMIC, Ambala, reveals that warrants of arrest of the petitioner, were received back with the report that the accused has gone out of station. Therefore, a proclamation under Section 82 of the Cr.P.C. against him, became issued, and was made returnable for 11.05.2020. Further, a perusal of the order of 01.02.2021 (Annexure P-3), as, made by the learned Magistrate concerned, reveals that a fresh proclamation was issued against the accused for 28.04.2021, while directing the Executing Constable to present before the Court for making his statement, on 22.02.2021. Thereafter, the learned Magistrate concerned, through, an order, made on 08.07.2021, has recorded that the police official concerned, had made a statement, that he had gone to the address of the accused, hence on 09.02.2021. However, the accused was not found at the given address, hence, he affixed one copy of the proclamation warrant outside the house of the accused, affixed the second copy at a conspicuous place, affixed the third copy at the notice board in the Court premises, and, furnished the fourth copy in the Court. The learned Magistrate concerned, after considering the afore made report, of the police official concerned, made an objective conclusion, that since the period of 30 days has elapsed, since the making of, and, service, or of publication of proclamation, thereupon, he proceeded to make an order, declaring the petitioner, as, a proclaimed offender, and, also, a direction was made, upon the SHO concerned, for registration of an FIR against the accused /

petitioner herein, hence under Section 174-A of the Cr.P.C.

5. The order of 08.07.2021 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 report of the serving / executing officer, which became depended, upon by the learned Magistrate concerned, to proceed to draw the impugned order of 08.07.2021, 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.

“ 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.

6. A circumspect and deepest reading, of the afore 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.

7. Consequently, in the report, as became relied, upon by the executive officer, and, as became depended upon by the learned Magistrate concerned, to make the impugned order, disclosure 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, and, completest compliance, without any of them remaining uncomplied with.

8. However, though the serving executing officer has in his report, made a disclosure that he had, on finding, that the accused was not found at the given address, at the relevant time, hence affixed, one copy of the proclamation on the given address of the accused, and, has also made a disclosure therein, that one copy of the proclamation became appended, at the conspicuous place, and, besides one copy became appended at the Judicial Court complex. However, a reading of the afore report, 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, not disclosing that he had also meted compliance to Clause (a) of sub-sub-Section (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(s) rather became cast upon him. Consequently, the knowledge of the proclamation notice, was not hence completely acquired by the petitioner, and, also the endeavour of the executing officer to serve the proclamation notice, upon, the accused, is completely deficit on score (supra).

9. Be that as it may, even the impugned order (supra), hence suffers from a vice of infirmity. Conspicuously, since the mens rea for the commission of an offence under Section 174-A of the IPC, arises only, when the completest compliance, rather becomes meted with the peremptory

statutory injunctions carried, in the entire component(s) of sub-sub-Section (i) of sub-Section (2), of Section 82 of the Cr.P.C., whereas, when for reasons (supra), a segment thereof remains uncomplied. Therefore, It was rather imperative, for the learned trial Magistrate concerned, to thereafter recourse the mandate of sub-Section (ii) of sub-Section (2) of Section 82 of Cr.P.C., inasmuch as, after his receiving the report of the executing officer, his proceeding, to make an order for publication of the proclamation notice, in the daily newspaper, hence circulating in the area in which the accused ordinarily reside(s). The learned Magistrate, however, did not after the afore deficit report of the executing officer, being made, recourse the mandate of sub-Section (ii) of sub-Section (2) of Section 82 of Cr.P.C. Consequently, the deficit report of the executive officer could not validly bedrock any further conclusion, that the petitioners ever nursed any penally inculpable, mens rea, for an offence under Section 174-A of the IPC.

10. In view of the above, the petition is allowed, and, the impugned order of 08.07.2021, declaring the petitioner, as a proclaimed offender, as also, FIR No. 503 of 30.11.2021, registered at Police Station Ambala City, District Ambala, constituting therein an offence under Section 174-A of the IPC, as well as subsequent proceedings arising therefrom, are quashed.

February 01, 2022
'dk kamra'

(SURESHWAR THAKUR)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>