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

CRM-M-2512-2022 (O&M)

Date of decision: 14.02.2022

GURMUKH SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Chanchal K. Singla, Advocate
for the petitioner.

(Through Video Conferencing)

SURESHWAR THAKUR, J. (ORAL)

CRM-4867-2022

The instant application filed seeking permission to place on record
Annexure P-10.

For the good reasons, recorded in the application, the same is
allowed, subject to all just exceptions.

Main case

1. The petitioner is an accused in FIR No.107 of 09.08.2017,
constituting therein offences embodied under Sections 420, 465, 468, 471 of
IPC, and, under Section 24 of the Immigration Act. The FIR (supra) is registered
at Police Station Amargarh, District Sangrur.

2. After the investigating officer holding investigations into the FIR
(supra), he instituted an affirmative report under Section 173 Cr.P.C., against the
accused concerned, before the learned Magistrate concerned. The petitioner was
summoned for his recording his personal appearance before the learned
Magistrate concerned. However, it appears, that since service through ordinary

mode, upon, the petitioner was not effected, and, hence the petitioner failed to record his personal appearance, before the learned Magistrate concerned. Therefore, the learned Magistrate concerned, through an order made on 06.11.2018 proceeded to after accepting the report of the serving constable hence declare the petitioner as a proclaimed offender.

3. It appears that the report of the serving constable, as embodied in Annexure P-10 was made by him, in pursuance to the learned Magistrate concerned, despite recouring all the legally ordained processes, for securing the personal appearance of the petitioner before him, his yet failing to secure his personal presence.

4. The impugned order appears to be made within the ambit of Section 82 of the Cr.P.C. Though, the provisions of sub-section 4 of Section 82 of the Cr.P.C., empowers the learned Magistrate concerned, to after a proclamation being published in the manner, as contemplated in sub-sections 2, and, 3 of Section 82 of the Cr.P.C., to proceed to declare the absconding accused concerned, as a proclaimed offender. Therefore, for testing the validity of the impugned order, it is also necessary to bear in mind the provisions carried in sub-sections 1, and, 2 of Section 82 of the Cr.P.C. The afore provisions are extracted hereinafter.

“82. Proclamation for person absconding.

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(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.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub- section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.”

5. Though, prior to the making of the impugned order, the learned Magistrate concerned, did proceed to elicit from the serving constable concerned, a report with respect to the mandate enclosed in sub-section 2 of Section 82 rather becoming complied with. However, it appears that the report of the serving constable concerned, as became relied, upon by the learned Magistrate concerned, is completely outside the domain of sub-section 2 of Section 82 Cr.P.C. The reason being that the serving constable concerned, has made in Annexure P-10, a report that the publication notice, as became received by him, for its being served, upon the accused, resulting in one copy thereof becoming affixed on the wall of the house of Gurmukh Singh, the second copy becoming affixed at a common place of village, and, the third copy becoming affixed on the notice board of the Court.

6. However, on a deepest reading of the mandate carried in sub-section 2, it is apparent that all the provisions carried therein are to be

conjunctively complied with or in other words, there is no scope therein, for the serving constable, to rather making fragmentary compliances thereto nor the serving constable can omit to also proceed to comply with the mandate carried in (i)(a) of sub-section 2 of Section 82 inasmuch as, his omitting to read the publication in some conspicuous place of the town, wherein, the accused person ordinarily resides. However, the report of the serving constable is silent, with respect to his meeting compliance qua the afore mandate carried in (i)(a) of sub-section 2 of Section 82 of the Cr.P.C. Therefore, since as afore stated, he was rather enjoined to meet compliance with all the provisions carried in sub-section 2, and, was not to meet compliances only to part of the provisions carried therein. Consequently, his report is legally infirm, and, also the reliance, as made thereon, by the learned Magistrate concerned, is not amenable for acceptance.

7. Be that as it may, as disclosed at page 23, as appended with the main petition, the petitioner departed on 26.06.2017 to a foreign country. Furthermore, page 24 of the paperbook reveals, that he returned from the foreign country to India, on 27.11.2018. The effect of the afore document(s) appended with the main petition, are that after filing of the affirmative report under Section 173 Cr.P.C. by the investigating officer concerned, before the learned Magistrate concerned, the accused was not residing in India. The further legal effect thereof is that unless, he was validly served at his foreign abode concerned, through the embassy of India located in the foreign country concerned, rather thereupon the endeavour of the learned trial Magistrate concerned, to serve him, at his abode at India was completely illegal. In addition, the effort on the part of the learned Magistrate concerned, to initially secure his presence before him through summons, and, upon his failing to hence

secure his presence, to thereafter, issue upon non-bailable warrants, hence was also completely illegal, as neither the summons could be validly personally served, upon the accused-petitioner nor the non-bailable warrants could be served, personally upon the petitioner at his abode in India. The service of the afore at the relevant time, was reiterated to be made, upon the accused-petitioner through the embassy of India, and, at his abode located in the foreign country concerned.

8. The sequel of the above discussion is that not only the learned Magistrate concerned, has committed a legal fallacy in assigning credit to the above infirm report, as placed before him, by the serving constable but also has failed to bear in mind the above referred trite factum qua, at the relevant time, of his assaying to secure the personal presence before him, of the accused-petitioner rather the latter being not in India. It appears that the afore legal fallacies have occurred only for want of meritworthy, and, legally befitting report(s) being either elicited or being made before the learned Magistrate concerned, either by the SHO of the Police Station concerned, or by the investigating officer concerned. The further effect thereof, is that the petitioner was neither willfully nor intentionally avoiding the causing of personal service (s), upon him, either of the summons or of the non-bailable warrants, and, neither of the above proclamation notice(s), as, none became either validly issued upon him nor became validly served upon him.

9. Therefore, for the afore reasons, he could not be declared a proclaimed offender. There is merit in the petition, and, is allowed, and, the impugned order of 06.11.2018 is quashed, and, set aside.

10. The petitioner if in India he shall forthwith surrender before the learned Magistrate concerned, whereupon the latter shall make orders in

accordance with law. If yet the petitioner is residing in a foreign country, the learned Magistrate concerned, shall take appropriate steps to validly serve him.

11. Pending miscellaneous application(s), if any, stand(s), disposed of.

14.02.2022

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(SURESHWAR THAKUR)
JUDGE

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