

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

CRM-M No. 868 of 2022 (O&M)

Date of Decision: 11.01.2022

Sukhbir Singh Malhi

..... Petitioner

Versus

Gurdeep Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Ms. Gagan Deep Grewal, Advocate
for the petitioner.

Mr. Harmandeep Singh Sullar, Deputy Advocate General, Punjab

(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 quashing of the order dated 13.09.2011 (Annexure P-7), where through, the petitioner was declared as a proclaimed offender by the learned Judicial Magistrate First Class, Moga.

2. Heard.

3. A perusal of the order of 04.06.2011, as, made by the learned JMIC, Moga, reveals that non-bailable warrants of arrest of the petitioner, as well as, of two other accused persons, were received back with the report that they are residing at Canada. Therefore, a proclamation under Section 82 of the Cr.P.C. against them, including the petitioner, became issued, and, was made returnable for 05.08.2011. A perusal of the order of 05.08.2011, as, made by the learned Magistrate concerned, reveals that the afore proclamation stood executed, and, also that a notice became issued to the serving constable to record his statement, on 20.08.2011. Thereafter, the

learned Magistrate concerned, through an order made on 13.09.2011, hence

enclosed with the petition as Annexure P-7, has recorded that as per the statement of the police official concerned, the proclamation, under Section 82 Cr.P.C., against accused – petitioner, became executed, upon the executing officer proceeding to the house of the accused, and, affixing a copy of proclamation at the gate of the house of accused. 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, and, service, or, of publication of proclamation, thereupon, he proceeded to make an order, declaring the petitioner as well as two other accused, as, proclaimed offenders.

4. The order carried in Annexure P-7 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, 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-7, it 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.

5. A circumspect and deepest reading, of the hereinafter extracted relevant portion of sub-Section (2) of Section 82 of the Cr.P.C., 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.

6. 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, 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.

7. 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. 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, became cast upon him.

Consequently, the knowledge of the proclamation notice, was not hence

executing officer to serve the proclamation notice, upon the accused, is completely deficit on score (supra).

8. Be that as it may, as averred in the present petition, the petitioner is residing in Canada since 23.10.2008, therefore, it was rather imperative, for the learned trial Magistrate concerned, to even if he intended to secure his appearance before him, or before any other Court of law, to ensure that personal service of the process of Court, became through, the Embassy of India, located in Canada, hence effected upon each of the accused including the petitioner herein. However, the afore evidence is grossly amiss. Consequently, when only upon valid personal service being made upon the accused by the executing officer concerned, through the Embassy of India, located at Canada, and, thereafter, theirs yet not recording their personal appearances, for the relevant purposes, before the learned Magistrate concerned, hence thereupon, it was validly open for the latter, 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). However, neither the executing officer, has ensured the causing of personal service upon the accused at Canada, nor the learned Magistrate concerned, has ensured that any proclamation notice became served, upon, the accused at Canada, hence through the aegis of the Embassy of India, located in Canada.

9. In view of the above, the petition is allowed, and, the impugned order of 13.09.2011 (P-7), declaring the petitioner, as a

proclaimed offender, as well as subsequent proceedings arising therefrom,
become quashed, and set aside.

January 11, 2022
'dk kamra'

(SURESHWAR THAKUR)
JUDGE

Whether Speaking/reasoned	Yes
Whether Reportable	Yes