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In the High Court of Punjab and Haryana at Chandigarh

**CRM-15453-2022 IN/AND
CRM-M-4172-2020
Date of Decision: 05.05.2022**

Nirmal Kumar

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Naresh Jain, Advocate for the petitioner.

Mr. Sandeep Singh Deol, DAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

CRM-15453-2022

The instant application has been filed for seeking permission to place on record Annexures P-8 to P-14.

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

CRM-M-4172-2020

1. The petitioner, by filing the present petition under Section 482 of the Cr.P.C., is seeking the quashing of order dated 9.9.2015 (Annexure P-2), where through, he was declared a proclaimed person, by the learned Judicial Magistrate Ist Class, Kharar.

2. Heard.

3. The petitioner is an accused in FIR No. 77 of 11.9.2013, registered at Police Station Mullanpur Garibdass, District SAS Nagar. An application moved by the prosecution for issuing non-bailable warrants against the accused persons including the petitioner, was allowed, and, thereafter

the non bailable warrants were ordered to be issued against the accused.

3. During the course of judicial proceedings, a perusal of the orders dated 2.9.2015 (Annexure P-12), and, 9.9.2015 (Annexure P-2), as, made by the learned JMIC, Kharar, reveal that the learned Magistrate concerned, has placed reliance on the statement of the police official concerned, who had made a statement on 2.9.2015, that he had affixed one copy of the proclamation warrant in front of the house of the accused, and that he had affixed the second copy at a public place in the village of the accused, and, besides had affixed the third copy on the notice board of the Court. Thereafter on 9.9.2015, 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, of publication of proclamation, thereupon, he proceeded to make an order, declaring the petitioner, as, a proclaimed person.

4. The order of 9.9.2015 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 9.9.2015, 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.

“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.”*

5. 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. 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, as, contemplated,

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.

6. Consequently, in the report, as made upon by the executing officer, and, as also 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, and, completest compliance, without any of them remaining uncomplied with.

7. 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 public 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 along with 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).

8. 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 petitioner ever nursed any penally inculpable, *mens rea*, for an offence under Section 174-A of the IPC.

9. Consequently, the impugned order dated 09.9.2015 (Annexure

P-2), where through the petitioner was declared a proclaimed person, is quashed, and, set aside qua the petitioner. The petitioner is directed to forthwith make his personal appearance, before the learned Magistrate concerned. Upon his personal appearance, before the learned Magistrate concerned, the latter shall, in accordance with law, pass appropriate directions qua him.

10. The petition is disposed of.

(SURESHWAR THAKUR)
JUDGE

May 05, 2022
Ithlesh

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