

In the High Court of Punjab and Haryana at Chandigarh

**CRM-M No. 6281 of 2022
Date of Decision: 15.2.2022**

Rai Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Nandan Jindal, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. Through the instant petition, a challenge is cast to the order, made on 21.7.2017 (Annexure P-2), wherethrough, after accepting the report of the serving constable, the learned Magistrate concerned, proceeded to declare the petitioner as a proclaimed absconder.

2. Since a perusal of the report, as made before the learned Magistrate concerned, by the serving constable concerned, and, as becomes appended with the petition as Annexure P-5, discloses that at the relevant time, the petitioner was residing at Canada. Therefore, the order of the learned Magistrate issuing process upon the petitioner for his recording his personal appearance, before him, becomes completely vitiated. The reason being that the unrebutted report of the serving constable being candidly suggestive that the petitioner was not, at the relevant time, residing at his abode in India. Therefore, the petitioner cannot become construed to

intentionally, and, deliberately avoiding to record his personal appearance,

before the learned Magistrate concerned. Consequently, unless valid service became caused upon him, through the Embassy of India, located at Canada, thereupto, the learned Magistrate concerned, could not, upon, his non-appearance before him, hence order for issuance of any further coercive processes, qua the petitioner, much less his proceeding to draw proceedings under Section 82 Cr.P.C.

3. Consequently, the impugned order is quashed, and, set aside. If the petitioner is in India, thereupon, he 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.

4. The petition is disposed of.

(SURESHWAR THAKUR)
JUDGE

February 15, 2022
Gurpreet

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