

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 8573 of 2022 (O&M)
Date of Decision: 07.3.2022

Manminder Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Amardeep Singh, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

Mr. Rajat Nain, Advocate
for respondent No. 2.

SURESHWAR THAKUR, J. (ORAL)

(Through video conferencing)

CRM-7350-2022

The application is allowed as prayed for.

CRM-M-8573-2022

1. The petitioner, by filing the present petition under Section 482 of the Cr.P.C., is seeking the quashing of order dated 27.10.2017 (Annexure P-2), wherethrough, he was declared a proclaimed person, by the learned Sub Divisional Judicial Magistrate, Ajnala.

2. The learned counsel for the petitioner submits, that the petitioner had gone to Australia on a student visa, on 17.9.2015. The petitioner came back to India on 5.5.2016, and, again went back to Australia, on 11.8.2016. Thereafter, the FIR (supra) was registered on

30.8.2016. He further submits that the matter has been compromised *inter se* the petitioner, and, the complainant, and, he has also filed a petition for quashing of the FIR (supra), hence on the basis of compromise.

3. The petitioner is an accused in FIR No. 68 of 30.8.2016, registered at Police Station Raja Sansi, District Amritsar. Vide order dated 6.6.2017 (Annexure P-8), non bailable warrants of arrest were ordered to be issued against the petitioner.

4. During the course of judicial proceedings, a perusal of the order dated 27.10.2017 (Annexure P-2), as, made by the learned Sub-Divisional Judicial Magistrate, Ajnala, reveals that the learned Magistrate concerned, has placed reliance, on the statement of the police official concerned, who had made a statement on 28.9.2017, that he had affixed one copy of the proclamation warrant upon the door of the abode of the accused, and that he had affixed the second copy at a public place, and, besides had affixed the third copy on the notice board of 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, of publication of proclamation notice, thereupon, he proceeded to make an order, declaring the petitioner, as, a proclaimed person.

5. The order of 27.10.2017 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 27.10.2017, 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.”*

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. 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, 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, 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.

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 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 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. Preponderantly also when *prima facie* at the relevant time, the petitioner was in Australia, hence, unless service was validly caused upon him, through the aegis of the embassy of India in Australia, which mode is not revealed to be adopted by the learned Magistrate concerned, thereupon, the endeavour to serve him, at his residence in India, was an inappropriate mode to ensure the causing of effectuation of personal service upon him.

10. Moreover, since a compromise, as existing at Annexure P-6 in the petition, has been drawn *inter se* all the concerned, thereupon, there may not be any necessity for the petitioner-accused, recording his personal appearance before the learned Magistrate concerned.

11. Consequently, the impugned order dated 27.10.2017 (Annexure P-2), wherethrough the petitioner was declared a proclaimed person, is quashed, and, set aside qua the petitioner.

12. The petition is disposed of.

(SURESHWAR THAKUR)
JUDGE

March 07, 2022
Gurpreet

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