

In the High Court of Punjab and Haryana at Chandigarh

**CRM-M No. 11258 of 2020
Date of Decision: 09.8.2022**

Sarabjeet Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Ruhani Chadha, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner is an accused in case FIR No. 155 of 28.12.2009, registered at Police Station Dasuya, District Hoshiarpur, wherein, offences constituted under Sections 323, 324, 506, 34 of the IPC, are embodied.

2. Though, after conclusion of investigations into the petition FIR, by the investigating officer concerned, he proceeded to file a report under Section 173 of the Cr.P.C., before the learned jurisdictionally empowered Magistrate, and, also subsequently trial against the accused concerned, hence opened, before the learned Magistrate concerned. Therefore, for ensuring the personal appearances of the accused before him, the learned Judicial Magistrate concerned, initially proceeded to recourse the non-coercive processes, upon the petitioner, for ensuring that he makes his personal appearances before him, but the above efforts remain unyielding. Consequently, the learned Magistrate concerned, became led to make an order, qua the petitioner being served through a proclamation notice.

3. The proclamation notice was sent for its execution, to the serving constable concerned, and, after the serving constable making his report, and, also his making a statement before the learned Magistrate concerned, in respect of his causing service of the proclamation notice, upon the petitioner, hence led the learned Judicial Magistrate concerned, to conclude that, since 30 days has elapsed, since service of the proclamation notice, being caused upon the petitioner, and, yet the petitioner not making his personal appearance, before him, that hence he has to be declared a proclaimed person, and, as such, through an order, carried in Annexure P-2, drawn on 16.1.2012, he declared the present petitioner, a proclaimed person. The afore order is challenged before this Court.

4. The validity of the above order is to be tested, on the anvil, whether Annexure P-5 which embodies a statement of the serving constable, falls within or outside the ambit of Section 82 of the Cr.P.C. For determining its validity, the statement of the serving constable becomes relevant, and, is extracted hereinafter.

“I received the proclamation in respect of the accused Sarabjit Singh @ Bhollu and Som Raj @ Soni and in compliance of the same I went to execute the proclamation in this case at the given address of the accused Som Raj @ Soni on 6.12.2011 and after taking Chowkidar with me, I conducted raid on the house of accused Som Raj and his wife met me in the house and she stated that the accused Som Raj had gone abroad i.e. Dubai for the last 6 months. Similarly on the aid date I also went to execute the proclamation issued against Sarbjit Singh @ Bholu and took chowkidar of the village Khokhar with me and went to the house of the accused Sarabjit Singh and his father namely Paramjit Singh met me in the house who stated that his son Sarabjit Singh is living in Dubai for the last 6 months. I also recorded the statement of Smt. Sonia wife of

Som Raj and Paramjit Singh son of Shri Teja Singh who is father of the accused Sarabjit Singh. The statements Ex. PA and PB. I place one copy of proclamation at the common place of the village and another copy on the notice board of the court. His report on the proclamations are Ex. PC and Ex. PD.”

5. A perusal of the hereinabove extracted report of the serving constable, reveals, that, upon the serving constable visiting the house of accused-present petitioner, then his father Paramjit Singh meeting him, and, making a statement to him, that the present petitioner is living in Dubai for the last 6 months. Therefore, unless the serving constable, had verified, the truth of the above disclosure, as made by the father of the present petitioner, about his, not being in India, rather his being in Dubai, at the relevant time, inasmuch as, his yet detecting that it was incorrect, thereupon he could proceed to cause personal service or substituted service of the proclamation notice, upon the concerned. However, the serving constable concerned, did not make the above verification about the correctness of the statement of the father of the present petitioner, that his son is residing in Dubai for the last six months, and, without the above verification, he yet proceeded to make substituted service of the proclamation notice. In consequence, rather no substituted service could be caused, upon the present petitioner, and, also any of the further steps, as taken by the serving constable, and, as occurring in Annexure P-5, could be taken, nor they could be concluded to be any valid effort, on the part of the serving constable, to cause any valid service of the notice of proclamation, upon, the present petitioner. The reason being, that neither any valid personal service could be caused, upon the present petitioner, nor substituted service could be caused, upon him, as at the relevant time, he was residing in Dubai, and, consequently, it was

incumbent, upon the learned Magistrate concerned, to ensure that service through ordinary processes, is caused, upon the present petitioner, and, that too, through the aegis of the embassy of India in Dubai, and, thereafter if the above process failed, it became incumbent, upon the learned Magistrate concerned, to make an order for extradition processs, being launched, against the present petitioner, for hence ensuring his making his personal appearance, before him, for the relevant purpose.

6. However, none of the above recourses became adopted by the learned Magistrate concerned, and, rather the latter proceeded to make invalid dependences, upon the deficit report of the serving constable. Therefore, any reliance, as, placed by the learned Magistrate, upon the report of the serving constable concerned, is vitiated, and, also the dependant thereon(s) rather the impugned order, is also completely flawed.

7. Consequently, the petition is allowed, and, the impugned order of 16.1.2012 (Annexure P-2), as, made by the learned Magistrate concerned, is quashed, and, set aside. The petitioner is directed to forthwith make his surrender before the learned trial Judge concerned, and, upon the petitioner making his surrender before the learned trial Judge concerned, the latter shall proceed to, in accordance with law, make appropriate orders. If he does not surrender, thereupon it is open for the learned Judicial Magistrate concerned, to launch, in accordance with law, processes for ensuring the extradition of the petitioner to India.

(SURESHWAR THAKUR)
JUDGE

August 09, 2022
Gurpreet

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