

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

CRM-M No. 16782 of 2021

Date of Decision: 16.03.2022

Kabul Singh

..... Petitioner

Versus

State of Haryana

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Sumit Sangwan, Advocate
for the petitioner.

Mr. Tanuj Sharma, Assistant Advocate General, Haryana

(Through Video Conferencing)

SURESHWAR THAKUR, J. (ORAL)

1. Through the instant petition, the prayer is restricted to the validity of the order drawn, on 23.11.2009 (Annexure P-2), by the learned Additional Chief Judicial Magistrate, Faridabad. Through the afore made order, the learned trial Judge concerned, upon, considering that the period of thirty days has become elapsed, since the absenting accused, being served through a proclamation notice, hence, declared him a proclaimed person.

2. The learned counsel for the petitioner submits that the afore order of 23.11.2009 (P-2), is in violation of the relevant mandatory provisions, as, become carried in Section 82 of the Cr.P.C.

3. The petitioner is alleged to commit the offences under Sections 379 / 411 of the IPC. The offences (supra) became constituted in FIR No. 661 of 21.10.2008 (Annexure P-1).

4. That since in Annexure P-9, it is reported that the accused had, since the last 1½ years, rather left his abode at Jhojhu Kalan,

thereupon, neither service through ordinary process could be caused upon

the petitioner, at his afore purported abode, nor the afore process could be validly executed upon him, nor thereafter the NBWs if any, as became issued upon the petitioner, could be validly executed upon the petitioner, and, nor the proclamation notice could become either issued nor could become attempted to be validly served upon the petitioner at Jhojhu Kalan.

5. Therefore, the attempt, as, made by the learned trial Magistrate concerned, to secure his personal appearance, before him, through issuances, upon him, of non-bailable warrants, at the above abode, rather remained futile. Consequently, the learned Magistrate concerned, through an order made on 20.10.2009 (at Page No. 7), proceeded to make an order, for his being summoned through a proclamation notice, and, the same was ordered to be made returnable for 23.11.2009.

6. The learned Magistrate concerned, also proceeded to appoint a police official, for causing execution of the afore made order. The police official concerned, had on visiting the premise(s) of the accused concerned, hence made a report / statement (Annexures P-9 / P-10), to the effect, that when he went to the house of the accused, he was not present, and, thereafter he proceeded to affix a copy of the proclamation notice, upon the house of the accused, and, also affixed the other copy thereof, at the common place, besides one copy became pasted, by him, hence outside the Court complex. The learned Magistrate concerned, after considering the afore made report / statement, of the police official concerned, made an objective conclusion, that since the period of 30 days has elapsed, since the making of the order of 23.11.2009 (Annexure P-2), hence declared the petitioner a proclaimed offender.

7. The order carried in Annexure P-2 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 afore report of the serving / executing officer, and, which became depended, upon by the learned Magistrate concerned, to proceed to draw the impugned order, as, carried in Annexure P-2, 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 deep reading thereof(s), all the ingredients carried therein, are required to be completely complied with, both by the executing officer concerned, who made the afore report, 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.

8. A circumspect and deepest reading, of the hereinabove extracted relevant portion of sub-Section (2) of Section 82 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-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-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.

9. Consequently, in the report, as became relied, upon by the executing officer, and, as became depended upon by the learned Magistrate concerned, to make the impugned order, disclosure 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.

10. Moreover, though the serving executing officer has in his statement (P-10), made a disclosure that he, at the relevant time, hence affixed, one copy of the proclamation on the house of the accused, another copy of the proclamation notice pasted at common place, besides one copy pasted in the 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, 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).

11. Be that as it may, even the impugned order (supra), hence suffers from a vice of infirmity. Moreover, when the completest compliance, rather becomes enjoined to become meted with the peremptory statutory injunctions carried in sub-sub-Section (i) of sub-Section (2), of Section 82 of the Cr.P.C., whereas, when for reasons (supra), only a segment thereof remains complied. 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.

12. Therefore, in the wake of the afore, and, also in the wake of afore discussion, revealing that the completest conjunctive compliance(s) are to become meted qua the mandate carried in sub-Section (2) of Section 82 of the Cr.P.C., whereas, when only a segment thereof becomes complied, thereupon the order of 23.11.2009 (P-2), as, made by the learned Additional Chief Judicial Magistrate, Faridabad, declaring the petitioner a proclaimed offender is vitiated, hence is quashed and set aside. NBWs, if issued, be recalled forthwith, and, if not issued, be not issued.

March 16, 2022

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**(SURESHWAR THAKUR)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>