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

CRM-M-16381-2022

Date of decision:22.04.2022

SHASHANK SANGAL

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. Pradeep Prakash Chahar, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. In complaint NACT No.25101 of 2018, titled as “M/s New Hindustan Welding Works V/s M/s Madira Company and Others”, through his proprietor Israil Khan, the present petitioner is arrayed, as accused with the name of Sushant. Though, the name of Sushant as revealed in Annexure P-3 is 'Shashank Sangal'. However, the learned counsel for the petitioner submits, that his misnaming as an accused in the apposite complaint, is curable, given as a matter of fact, he is the alleged partner, and, authorized signatory of M/s Madira Company.

2. Therefore, since the apposite mis-namings is acquiesced by the learned counsel for the petitioner, and, also may become undone through an appropriate order, on an apposite application, being made by the learned trial Magistrate concerned, hence it assumes no relevance for purposes of deciding the present petition.

3. Be that as it may, and, if so, the present petitioner is aggrieved from an order comprised in Annexure P-8, wherethrough the learned Judicial Magistrate concerned, declared, the petitioner as a proclaimed person, given his

being purportedly served with the proclamation notice, and, yet his not within 30 days therefrom making his personal appearance before him.

4. Moreover, the learned Magistrate concerned, also ordered for registration of a case against the petitioner under Section 174-A of the IPC.

5. Through the instant petition a challenge is made both to Annexure P-8, and, also to the consequent therewith FIR carried in Annexure P-9, and, both are prayed to be quashed, and, set aside.

6. The order impugned before this Court would become invalidated only, upon the report of the serving constable, which becomes reproduced, at page 6 of the petition, and, becomes extracted hereinafter, not satisfying all the ingredients, and, components of the mandate carried in (i)(a) of sub-section 2 of Section 82.

“Sir,

For the publication of proclamation, I have reached on given address on 20.08.2021. Accused Sushant not found there. On asking from the person present there no information regarding the accused was gathered. The copy of one proclamation is posted at given address, one copy is pasted at public place and one copy is pasted on the notice board outside the court. The original proclamation along with report is being presented.

Sd/-

*Ct Arun 3696
P.S. Sector-56
8397817767
Dt. 20.08.2021”*

7. However, a reading of the afore extracted report of the serving constable reveals, that though he proceeded to do the acts, as mentioned therein, but there is no echoing therein, that apart therefrom, he also proceeded to read the notice at a conspicuous place wherein the accused-petitioner herein, was residing. Since the serving constable was rather not to make the afore

omission, as thereupon, there he would be omitting to make the enjoined completest satisfaction to the entire components, of the mandate carried in (i)(a) of sub-section 2 of Section 82 of the Cr.P.C., whereas, his making the afore omission, causes breach to the apposite components, and, ingredients of the mandate carried in (i)(a) of sub-section 2 of Section 82 of the Cr.P.C., all of which, as afore stated require theirs being meted the completest satisfaction. In consequence the deficit report of the serving constable was not amenable to become accepted by the learned Magistrate concerned.

8. The further effect thereof, is that the petitioner was neither willfully nor intentionally avoiding the causings of personal service(s), upon him, of the above proclamation notice(s), as, it never became validly issued, upon him nor became validly served upon him. As a corollary when the *mens-rea* appertaining to an offence under Section 174-A of IPC rather does not surface.

9. Therefore, for the afore reasons, he could not be declared either a proclaimed person nor the consequent therewith order of the learned Magistrate ordering for the registration of an FIR against the petitioner for an offence under Section 174-A of IPC, is valid. There is merit in the petition, and, is allowed, and, the impugned order of 29.11.2021, as carried in (Annexure P-8), and, also the consequent therewith FIR carried in Annexure P-9, are both quashed, and, set aside.

(SURESHWAR THAKUR)
JUDGE

22.04.2022

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Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No