

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 17993 of 2022

Date of Decision: 11.7.2022

Sohan Lal

.....Petitioner

Versus

Amit Kumar and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

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

Mr. Harpreet Singh Multani, AAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner is an accused in complaint bearing No. NI Act/165 of 28.1.2019. The petition complaint is constituted under the provisions of Section 138 of the Negotiable Instruments Act, 1881.

2. It appears that after the recording of the preliminary evidence, upon the petition complaint, by the learned Magistrate concerned, the latter strived to, initially through the issuance of ordinary processes, cause the personal appearances before him, of the accused, but the afore processes remained unyielding. Consequently, through Annexure P-6, the learned Magistrate concerned, made a direction, to cause the personal appearance before him, of the accused, rather through the execution of warrants of arrest, upon him. However, it appears that the above endeavour also failed. Consequently, through an order made on 25.10.2021, the learned Magistrate concerned, ordered for the personal presence of the accused, being caused before him, through a proclamation notice, being served, upon him.

3. The official appointed for executing the notice of proclamation, made his report, and, the learned Magistrate concerned, after considering

that since 30 days have elapsed since the makings of purported valid

service, of the proclamation notice, being caused, upon the accused, proceeded to, through an order made on 2.4.2022, appended to the instant petition as Annexure P-10, declare him as a proclaimed person, and, thereafter made a direction that an intimation qua the above regard, be made, qua the SHO of the police station concerned.

4. The order, as comprised in Annexure P-10 has been challenged before this Court. For making an adjudication qua the validity of the impugned order, it is necessary to bear in mind, the report of the serving constable, as became appended depended upon by the learned Magistrate concerned. The translated copy of the report of the serving constable is extracted hereinafter.

“We verify that Sohan Lal son of Manohar Lal, caste Harija, is a resident of Tihano, Police Station Chhacchhrauli, who along with his family, has not been residing in the village since many years. As and when he will come to the village, we will inform him about the date of appearance.”

Sd/- Sher Singh

Sd/-Surender Kumar

Sher Singh/S/o Manohar Lal

Surinder Kumar s/o Manohar Lal

R/o Tihano,P.S.Chhacchhrauli

R/o Tihano,P.S.Chhacchhrauli

Distt. Yamunanagar

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“On dated 29.2.2022, I received a proclamation for effecting service. Accused Sohan Lal s/o Manohar Lal, R/o Tihano, Police Station Chhachhrouli was not found present at home. Aforesaid persons found present in the village, who told that Sohan Lal is not residing in the village since many years. One copy of the proclamation on 29.2.2022 was pasted at public place Ravi Dass Mandir, 2nd copy was pasted outside the Court. The 3rd copy is submitted herewith after report.”

5. A perusal of the afore extracted report reveals, that despite the serving constable after making an inquiry from the villagers concerned, and,

who had rather intimated to him, that the accused had not been residing at the address mentioned against his name in the proclamation notice, and, rather the petitioner had proceeded to some other abode, yet proceeded to paste a copy of the proclamation notice at a public place, and, also pasted another copy thereof outside the Court, besides appended the third copy with his report.

6. However, since the serving constable, had on an inquiry, being made from the neighbours concerned, hence discovered that the accused had left the address, as mentioned in the proclamation notice, thereupon it became incumbent, upon him to make a report to the learned Magistrate concerned, rather than to proceed to paste the copy(ies) thereof at a public place, the second copy thereof outside the Court, and, to append the third copy with his report.

7. Only if the serving constable had not made any of the above mentioned pastings, and, had made a simpliciter report to the learned Magistrate concerned, that the accused was not residing at the abode mentioned against his name, in the proclamation notice, thereupon the Court was required to ascertain the present/extant abode of the accused, and, thereafter it also became incumbent, upon the Court to ensure through initially ordering for his service being caused, through the ordinary processes, and, obviously so, for ensuring that he records his personal appearances before him, and, thereafter, in case the above endeavour failed, to, at the correct address of the accused, ensure that the coercive processes became there served, upon him.

8. Contrarily, despite for reasons supra, the accused not residing at the address, mentioned against his name, in the proclamation notice, the

serving constable yet untenably proceeded to paste the copies thereof, at the venues disclosed therein, and, even the above pastings, do not mete, the absolutest compliances with all the ingredients, as carried in sub-Clause (a) of sub-sub-Section (i) of sub-Section (2) of the Section 82 of the Cr.P.C., inasmuch as, apart from the pasting(s) of the proclamation notice, being done at the venues concerned, he became also enjoined to read aloud the proclamation notice, at a conspicuous place of the locality concerned. Since he did not, at a conspicuous place of the locality, read aloud the proclamation notice, thereupon, also his report was outside the ambit of sub-sub-Section (i) of sub-Section (2) of the Section 82 of the Cr.P.C., and, also the dependence made thereons, rather by the learned Magistrate concerned, become completely fallible.

9. In consequence, the purported service of proclamation notice, upon the accused, is completely infirm, and, the further legal consequence thereof is that the impugned order also becomes legally fallible, and, deserves its being quashed, and, set aside.

10. Accordingly, the petition is allowed. The impugned order is quashed, and, set aside.

11. The accused-petitioner is permitted to, within a week from today, make his surrender before the learned Court concerned. Upon the accused-petitioner making his surrender, the learned trial Magistrate concerned, shall make appropriate orders, as deemed fit in law.

(SURESHWAR THAKUR)
JUDGE

July 11, 2022
Gurpreet