

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

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**CRM-M-18505-2022
Decided on : 28.07.2022**

Ravi Gera

... Petitioner(s)

Versus

State of Punjab and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

PRESENT: Mr. T.S. Attariwala, Advocate
for the petitioner(s).

SURESHWAR THAKUR, J. (Oral)

1. The petitioner is an accused in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881.

2. It appears that since through ordinary non-coercive processes, the learned trial Judge concerned, failed to ensure the makings of the personal appearance, before him, of the present petitioner, thereupon, he resorted to the coercive processes, for the relevant purposes. It appears that even the appropriate coercive processes, also failed, ultimately leading the learned Judicial Magistrate concerned, to issue a notice of proclamation, for its becoming served upon the non-appearing accused-petitioner herein, for therethrough the petitioner's personal appearance before him, becoming caused.

3. Since the petitioner herein, despite 30 days elapsing, since the serving constable making an effort to serve him, did not put his personal appearances before the learned trial Judge concerned, thereupon, the learned trial Magistrate concerned, through an order, made on 06.03.2019, became constrained to declare the petitioner, as a proclaimed offender, and, also

made an intimation, to the SHO concerned, for the making an entry in this regard in the relevant register.

4. In determining the validity of the above made order, it is imperative to bear in mind the relevant report of the serving constable, and, as became depended, upon, by the learned Magistrate concerned. The relevant portion whereof becomes extracted hereinafter.

“Stated that the proclamation of accused Ravi Gera S/o Shri Sai Dass, R/o H.No. 8, Work Center Colony, Rajpura, Distt. Patiala, marked to me for execution on 24.01.2019 and I affixed the same on 02.02.2019. I went to the address of accused as given in the proclamation. He was not available at his house. I affixed one copy of proclamation at the gate of the house of accused, second copy at common place and third copy at the notice board of the Hon'ble Court. The proclamation of accused to me is Ex.PA/1 and my written report is Ex.PB/1.”

5. A perusal of the hereinabove extracted report of the serving constable, reveals, that though he did perform all those lawful acts, as mentioned therein, but yet he has omitted to also read aloud the proclamation in a conspicuous place, of the locality, wherein the accused was residing, whereas, the afore reading(s) was to be also made by him, along with the other statutory compliances (supra), as revealed to be made in his report.

6. Consequently, since in the report, as became prepared by the executing officer, and, as became depended upon by the learned Magistrate concerned, to make the impugned order, disclosures are to also 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, whereas, conspicuously the disclosures (supra) being

completely amiss therein(s). In sequel, the service of the proclamation notice, upon the present petitioner, was not in accordance with law, therefore, the impugned order is not sustainable.

7. Consequently, the petition is allowed, and, the impugned order of 06.03.2019 (Annexure P-1), as, made by the learned Magistrate concerned, is quashed, and, set aside.

8. The learned trial Judge is warned to be careful in future.

(SURESHWAR THAKUR)
JUDGE

July 28, 2022
J.Ram

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*