

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

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**CRM-M-18282-2022
Decided on : 28.07.2022**

Manjit Kaur and another

... Petitioner(s)

Versus

State of Punjab

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

PRESENT: Mr. Ramnish Puri, Advocate
for the petitioner(s).

SURESHWAR THAKUR, J. (Oral)

1. Through the instant petition, cast under Section 482 Cr.P.C., the petitioners claim for relief for quashing of FIR No. 41, dated 05.04.2019, registered at Police Station Kathu Nangal, District Amritsar, wherein, an offence constituted under Section 174-A of the Indian Penal Code is embodied. Moreover, a prayer is also made in the petition, for the quashing of all the consequential proceedings as arise therefrom.

2. The foundation of the above claim/prayer is rested, upon, an order carried in Annexure P-1. Through Annexure P-1, the learned Addl. Chief Judicial Magistrate, while making dependence upon the report of the serving constable, proceeded to declare the present petitioners, as proclaimed offenders, and, also proceeded to direct, that an intimation in the above regard, be made to the Police Station concerned. Therefore, the present FIR became registered against the present petitioners.

3. The foundation of the order carried in Annexure P-1, is the report of the serving constable, as carried in Annexure P-4. The contents of Annexure P-4, are extracted hereunder:-

“It is stated that in regarding to proclamation u/s 82 Cr.P.C. against accused Manjit Kaur d/o Puran Singh R/o Mann, raid was conducted at the house of accused on 25-9-12. The accused was not found at the house. On the statement of member Veer Kaur, one copy of proclamation was affixed at the house of the accused and another copy was affixed as

conspicuous place and one copy was affixed outside the Hon'ble Court. My report is exhibit, which is true and correct. This action was done on 25-9-12. Copy of publication is exhibit ____.

It is stated that in regarding to proclamation u/s 82 Cr.P.C. against accused Mandeep Kaur d/o Sawinder Singh R/o Mann, raid was conducted at the house of accused on 25-9-12. The accused was not found at the house. On the statement of member Veer Kaur, one copy of proclamation was affixed at the house of the accused and another copy was affixed as conspicuous place and one copy was affixed outside the Hon'ble Court. My report is exhibit, which is true and correct. This action was done on 25-9-12. Copy of publication is exhibit ____.”

4. A reading of the above extracted report(s) of the serving constable, as became depended upon by the learned Addl. Chief Judicial Magistrate, reveals that though the serving constable visited the premises of the present petitioners, but they were not found there at the relevant time. However, the serving constable has revealed therein, to yet affix a copy of the proclamation at the house, and, to affix another copy in the locality, besides, to also affix the third copy outside the Court. However, the above performed acts by the serving constable, did not yet relieve him of the further statutory necessity qua of his apart from doing the above acts, his also through drums beatings, in the locality concerned, reading aloud the proclamation notice at a conspicuous place of the area concerned. The above statutory necessity was imperatively required to become conjunctively complied, along with the above performed acts by the serving constable. However, it remained unperformed, and, thereupon, a breach of the mandate of clause (i) of sub-Section (2) of Section 82 Cr.P.C., has been caused. Resultantly, the report of the serving constable is legally defective, and, also is extremely fragile. Since the *mens rea* for the requisite absence, becomes aroused only when the strictest compliance is done, by the serving constable, to all the components of clause (i) of sub-Section (2) of Section 82 of Cr.P.C. However, since all the above stated components of the statutory

provisions (supra), evidently not became complied with, by the serving constable, nor also when the requisite awakenings became aroused in the petitioners, about the necessity of theirs personally appearing before the Court concerned, on the dates mentioned in the proclamation notice.

5. As a corollary, there was no deliberate omission and negligence on the part of the petitioners to avoid causing their respective personal appearances, before the trial Court, on the date relevant, given the proclamation notice never becoming validly served upon them.

6. In sequel, the petition is allowed, and, the FIR No.41, dated 05.04.2019, under Section 174-A of IPC, registered at Police Station Kathu Nangal, District Amritsar (Annexure P-2), and, the order dated 05.12.2012 (Annexure P-1), declaring the petitioners, as proclaimed persons, and, all the subsequent proceedings arising therefrom, are quashed.

7. The learned trial Judge concerned, is cautioned to be careful in future.

(SURESHWAR THAKUR)
JUDGE

July 28, 2022

J.Ram

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No