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

CRM-M-19659-2022

Date of decision:12.07.2022

DEEPAK SANAN AND OTHERS

...Petitioner

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Sahil Gupta, Advocate for the petitioners.

Mr. Tanuj Sharma, AAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioners are accused in complaint No.1240/2019 of 21.05.2019, titled as '***Smt. Reena Jain V. M/s Asian Townsville Farm Ltd. And others***'.

2. After the institution of the complaint before the learned Magistrate concerned, the latter proceeded to secure, through issuance of ordinary processes, upon the petitioners herein, rather their personal appearances before him. However, the above initial recourses, as made by the learned Magistrate concerned, were completely unyielding. Consequently, through an order made, on 30.09.2021, order whereof becomes extracted hereinafter, the learned Magistrate concerned, make an order for the service of a proclamation notice, upon the petitioners herein.

“Warrants of Arrest issued against accused No. 1, 2, 5 & 6 received back served through their servants. Bare perusal of the file shows notice issued to the accused was not received back but track report was placed on the report which shows that “item delivery confirmed”. Meaning thereby, service has been effected upon the accused. Further, bailable warrants issued against accused No. 1, 2, 5 & 6 received back served through Director. But despite service,

accused persons have not come present before the Court. Therefore, it can be presumed that accused are well aware about the pendency of the case and they are deliberately avoiding the service of aforesaid process of summons, bailable warrants and non bailable warrants.

It is pertinent to mention here that due to the on-going COVID-19 pandemic and instructions issued by the Hon'ble Punjab and Haryana High Court, no adverse order was passed against the accused. Nevertheless, now, the guidelines have been relaxed to quite an extent and now, the accused are expected to come present before the Court and pursue their cases on every date.

Therefore, in the given set of circumstances, this Court is satisfied that accused No. 1, 2, 5 & 6, against whom the warrant was issued, have absconded or is concealing themselves to avoid the execution of said warrants. As the present case is not in respect of an offence covered by sub Section (4) of Section-82 of Cr.P.C. 1973, as such, it is hereby ordered that a proclamation under Section-82(1) of Cr.P.C. 1973, be issued against accused No. 1, 2, 5 & 6, requiring the said accused persons to appear before this Court at any time within 30 days from the date of publication of the proclamation. It is further ordered that in terms of sub Section(2) of Section-82 of Cr.P.C., 1973, the proclamation shall be published as follows :-

(a) it shall be publicly read in some conspicuous place of the town or village in which above named accused ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which the said accused ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall also be affixed to some conspicuous part of the Court-house.

Executing Official is directed to affix the publication on or before 14.01.2022 and appear before the Court on same date for making his statement in this regard. Let 14.02.2022 be fixed for the presence of accused and be also made part of the published proclamation.

Reply to the application for considering his defence has been filed by the complainant. Now to come up on 14.01.2022 for consideration on the above said application."

3. The above statutory recourse also failed, and, resulted in the making of the impugned order, hence on 14.02.2022, order whereof, becomes extracted hereinafter.

“Today, the case was fixed for presence of accused Deepak Sanan, Rahul Dixit, Kumud Gaba and Gaurav Raj . Case called several times since morning. Accused Deepak Sanan, Rahul Dixit, Kumud Gaba and Gaurav Raj have not come present before the Court. Perusal of the file shows that proclamation against the accused Deepak Sanan, Rahul Dixit, Kumud Gaba and Gaurav Raj was issued on 30.09.2021. Thereafter, statements of tamili were recorded on 14.01.2022 and case was adjourned for presence of accused Deepak Sanan, Rahul Dixit, Kumud Gaba and Gaurav Raj for today. However, it is already 04:00 PM. Accused Deepak Sanan, Rahul Dixit, Kumud Gaba and Gaurav Raj have not come present before the Court. No further wait seems to be justified. The period of 30 days fixed in the proclamation for the appearance of accused has already expired. Therefore, accused Deepak Sanan, Rahul Dixit, Kumud Gaba and Gaurav Raj who are not accused of any offences specified under Section 82(4) Cr.P.C. are hereby declared as Proclaimed Person under Section 82(1) of Cr.P.C. in terms of the law laid down in Satinder Singh vs. The State of U.T. Chandigarh and another, 2011 (2) RCR (Criminal) 89 and Rahul Dutta Vs. State of Haryana, CRM-M-34328-2011 (O&M). Copy of this order be sent to the SHO concerned for taking appropriate proceedings against the said accused as per law.

Today learned counsel for the accused No. 4 moved an application for dismissal of the complaint. Copy given. Now the case is adjourned to 25.03.2022 for filing reply to the above said application.”

4. The present petitioners are aggrieved from the order comprised in Annexure P-12, wherethrough the learned Judicial Magistrate concerned, ordered for the petitioners being declared as 'proclaimed persons', as despite

theirs, being purportedly served with the proclamation notice, theirs not, within 30 days therefrom, making their personal appearances before him.

5. Moreover, the learned Magistrate concerned, also ordered the SHO concerned, for taking appropriate proceedings against the accused.

6. Through the instant petition a challenge is made both to Annexure P-12, and, also to the consequent therewith FIR carried in Annexure P-14, and, both are prayed to be quashed, and, set aside.

7. The order impugned before this Court would become invalidated only, upon the report of the serving constable, which becomes appended, as Annexure P-11 with the petition, and, becomes extracted hereinafter, satisfying all the ingredients, and, components of the mandate carried in (i)(a) of sub-section 2 of Section 82.

“It is humbly submitted that on dated 13.10.2021, I reached Delhi on the given address of Deepak Sanan to serve the proclamation. CM Bhando was found present in the office who told that he is the Director of the Firm and Deepak Sanan seldom visits there for a meeting or when there is any work and he will be informed regarding the proclamation when he comes. Therefore, a copy of proclamation was pasted on the given address, the second copy was pasted on the notice board of the Hon'ble Court and the third copy is presented for your kind perusal along with the report.

Ex.P-4

JMIC/14.01.2022

Sd/- Sukhbir Singh

It is humbly submitted that on dated 13.10.2021, I reached Delhi on the given address of Kumud Gaba to serve the proclamation. CM Bhando was found present in the office who told that he is the Director of the Firm and Kumud Gaba seldom visits there for a meeting or when there is any work and he will be informed regarding the proclamation when he comes. Therefore, a copy of proclamation was pasted on the given address, the second copy

was pasted on the notice board of the Hon'ble Court and the third copy is presented for your kind perusal along with the report.

Ex.P-2

JMIC/14.01.2022

Sd/- Sukhbir Singh

It is humbly submitted that on dated 13.10.2021, I reached Delhi on the given address of Gaurav Raj Prashar to serve the proclamation. CM Bhando was found present in the office who told that he is the Director of the Firm and Gaurav Raj Prashar seldom visits there for a meeting or when there is any work and he will be informed regarding the proclamation when he comes. Therefore, a copy of proclamation was pasted on the given address, the second copy was pasted on the notice board of the Hon'ble Court and the third copy is presented for your kind perusal along with the report.

Ex.P-1

JMIC/14.01.2022

Sd/- Sukhbir Singh

It is humbly submitted that on dated 13.10.2021, I reached Delhi on the given address of Rahul Dixit to serve the proclamation. CM Bhando was found present in the office who told that he is the Director of the Firm and Rahul Dixit seldom visits there for a meeting or when there is any work and he will be informed regarding the proclamation when he comes. Therefore, a copy of proclamation was pasted on the given address, the second copy was pasted on the notice board of the Hon'ble Court and the third copy is presented for your kind perusal along with the report.

Ex.P-4

JMIC/14.01.2022”

Sd/- Sukhbir Singh

8. However, a reading of the afore extracted report of the serving constable reveals, that though he proceeded to paste the notice, at the venues as mentioned therein but there is no echoing therein qua apart therefrom, his also proceeding to read aloud, the notice, at a conspicuous place, wherein, the accused-petitioners herein resided. Since the serving constable was rather to not

make the afore omission, as thereupon, he would be omitting to adhere to the enjoined per-emptory compliances, qua all the 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, makes breach to all the 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, do imperatively require theirs being meted the completest adherence. In consequence the deficit report of the serving constable was not amenable to become accepted by the learned Magistrate concerned.

9. The further effect thereof, is that the petitioners were neither willfully nor intentionally avoiding the causings of personal service(s), upon them, of the above proclamation notice(s), as, it never became validly issued, upon them, nor became validly served upon them.

10. Therefore, for the afore reasons, they could not be declared a 'proclaimed persons'. There is merit in the petition, and, is allowed, and, the impugned order of 14.02.2022, as carried in (Annexure P-12), and, also the consequent therewith dependent thereons, FIR carried in Annexure P-14, are hence quashed, and, set aside.

11. The petitioners are directed to forthwith make their personal appearances, before the learned Magistrate concerned. Upon their personal appearances, before the learned Magistrate concerned, the latter shall, in accordance with law, pass appropriate directions qua them.

(SURESHWAR THAKUR)
JUDGE

12.07.2022

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Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No