

CRM-M-21102-2022

Date of Decision: July 26, 2022

Jaspal Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present:- Mr. Vivek K. Thakur, Advocate for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

SURESHWAR THAKUR, J. (Oral)

1. Petitioner is an accused in FIR No.60 of 25.12.2010, registered at Police Station Fattu DHINGA, District Kapurthala. After completion of investigation into instant FIR, the Investigating Officer concerned, has instituted a report under Section 173 Cr.P.C. before the learned trial Magistrate concerned. In consequence thereof, initially the learned trial Magistrate, through issuance of ordinary processes attempted to secure the personal appearance of the petitioner-accused. However, the above recourses were unyielding. Consequently, he ordered for the procuring of the presence of the petitioner-accused, through the issuance of non-bailable warrants, but yet the above process also did not cause the personal appearance, of the petitioner-accused, before him. Resultantly, through an order drawn, on 05.06.2012, appended as Annexure P-3 to the petition, the learned trial Magistrate, made an order for the petitioner-accused being served through a proclamation notice.

2. The appointed serving constable for the the above purpose, though visited the abode of the petitioner-accused, but the report as made by him, is extracted hereinafter:-

“Statement of Sandeep Kaur wife of Jaspal Singh @ Pala resident of Village Mehmadwal, Police Station Fattu DHINGA, Tehsil Sultanpur Lodhi, Kapurthala.

Stated that I am resident of the aforementioned address, Jaspal Singh @ pala is my husband and he has gone to abroad England. Statement has been read which is correct. Head Constable Manjit Singh. Proclamation Notice since has been affixed in the Village. Statement is read which is correct.

Sd/-

Sandeep Kaur

Attested by Manjit Singh 1537/HC

PS Sultanpur Lodhi,

Dated: 05.07.2012”

Sir,

It is submitted that I have affected the services of proclamation in village Mehmadpur, by affixing one copy of proclamation on the door of the house of Jaspal Singh, and one copy has been affixed on the public Chowk, and one copy of the same has been affixed on the Notice board of the Court and the report is being submitted to the Court.

Sd/-

Manjit Singh 1537/HC

PS Sultanpur Lodhi,

Dated: 05.07.2012”

3. The above extracted report became depended upon, by the learned Magistrate, and led him to make the impugned order, as carried in Annexure P-6, and, through it the learned Magistrate declared the petitioner-accused as a proclaimed person.

4. The above extracted report of the serving constable, candidly discloses, that though the proclamation notice was to be served personally upon the petitioner-accused, and, or if he was not at the relevant time staying at his homestead thereupon, the serving constable was to paste one copy on the outer door of the premises, affix the second copy on the notice board of the Court, and, also through drum beatings read aloud the proclamation notice. However, all the above steps were required to be conjunctively complied, and, were never to be complied in the alternate. Even beyond that, irrespective of no compliance being meted, by the serving constable, to the statutory necessity of his, through drum beatings read aloud the proclamation notice, in the locality concerned, rather the conspicuous trite factum, that with the serving constable in his/her report extracted hereinabove, making a disclosure that at the relevant time, the petitioner-accused was in England. Therefore, the apposite intimation as made to him, in the proclamation notice, could not ever be personally made to him nor he could in sequel thereto cause his personal appearance, before the learned trial Magistrate concerned, nor the proclamation notice could be construed to become lawfully served upon him.

5. In the wake of the above, it became incumbent upon the learned trial Magistrate concerned, to ensure that the petitioner-accused, becomes served at England, rather through the Embassy of India located at England, which recourse however even earlier never became endeavoured .

6. Therefore, for the afore reasons, the petitioner-accused could not be inferred to become ever validly served, thereupon, he could not be declared a proclaimed person. There is merit in the petition, and, is allowed,

and, the impugned order of 14.08.2012, as carried in Annexure P-6, is quashed, and, set aside.

7. However, the petitioner is directed to forthwith make his surrender before the learned trial Magistrate concerned, and, upon doing so, the learned Magistrate concerned shall make appropriate orders, in accordance with law. The learned trial Judge is cautioned against re-committing the above error.

8. Disposed of.

July 26, 2022

sarita

(SURESHWAR THAKUR)

JUDGE

Whether reasoned/speaking: Yes/No

Whether reportable: Yes/No