

CRM-M-20456-2022 (O&M)

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

125

**CRM-M-20456-2022 (O&M).
Date of Decision: 21.07.2022**

Parveen

.. Petitioner

Versus

State of Haryana

.. Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

**PRESENT: Mr.Anil Shukla, Advocate
for the petitioner.**

Mr.P.P.Chahar, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

CRM-24987-2022

The instant application has been filed seeking permission to place on record Annexure P-5.

For the good reasons, recorded in the application, the same is allowed, subject to all just exceptions.

Annexure P-5, is taken on record.

Main case

1 The petitioner is an accused in FIR No.826 of 26.12.2021, constituting therein, an offence embodied under Section 174-A of the IPC. The FIR (supra) is registered at Police Station Civil Lines, Karnal, District Karnal.

2 Petitioner challenges the order made on 8.4.2021 appended as Annexure P-4, to the petition, where through, the learned Magistrate concerned proceeded to, declare him, a proclaimed offender, and, also proceeded to direct the SHO of the Police Station concerned, to institute an FIR, against the accused, under Section 174-A IPC.

3 This Court would proceed to validate the impugned order, only if the report of the serving Constable, upon, which it became dependent, does upon its readings unfold, that it falls within the contours of sub Section (i) of sub Section (2) of Section 82 of the Cr.P.C., otherwise not.

4 In determining the aforesaid factum, the report of the serving Constable is required to be perused, and, is also required to circumspectly analyzed.

5 Report of the serving Constable is carried in Annexure P-5, and, becomes appended with CRM-24987-2022.

6 The report is extracted hereinafter:-

“Sir,

In regard to the proclamation, raid was conducted time and again at the residence of accused Parveen, resident of Kunjpura. Accused was not found present in the house. The above-mentioned persons have told that

Parveen has ran away from the house for the last 2 months and his whereabouts are not known as to where he is. Search is continuing.

The copy of the proclamation has been affixed on the conspicuous place on the outside of the house of the accused on 6/3/21 and the 2nd copy has been affixed on the notice board outside the Hon'ble court and the 3rd copy along with signed statement is submitted in the Hon'ble court.

*SPO Joginder-44
PS- Kunjpura
16.3.2021”*

7 A reading thereof, reveals that despite the serving Constable visiting the abode of the accused, yet, his not discovering him there, rather, his, being intimated by some persons, that the accused had fled from his house, for the last two months, and, that his whereabouts are unknown. Therefore, it is apparent, that when the house concerned, became visited by the serving Constable concerned, for his making service of the proclamation notice upon him, rather, the accused rather was not present there, and, that he had abandoned his house, besides further his whereabouts were unknown. Therefore, the above attempt of the serving Constable to cause personal service of the proclamation notice, upon the accused, when rather, cannot become construed to be a valid attempt. Therefore, the affixations, by the serving Constable concerned, of the proclamation notice on the outside door of his house, also cannot be construed, to be a valid attempt to bring qua it, any, awakening, upon the petitioner, especially, upon, his returning to his abode, necessarily when, he had abandoned his known abode, and, nor he could be construed to become validly served with the

proclamation notice.

8 Moreover, the serving Constable, in his above extracted report, did as enumerated therein affix the second copy on the notice board of the Court, and, also submitted the third copy before the learned Magistrate concerned. However, even if assuming, that the serving Constable concerned, had performed lawful acts, of pasting the proclamation notice on the outer door of the premises of the accused-petitioner, and, though apart from his doing so, he did also perform the other above mentioned acts, and, though they may assume the colour of validity, de hors, the accused abandoning his home, but only if he also had evidently read aloud, through drum beatings, the proclamation notice, rather, in the locality where the accused was last residing. The above would have ensured, that the relatives or friends concerned, beget the apposite intimation, for thereafter theirs conveying it, to the accused, about the necessity of his causing his personal appearance, for the relevant purpose, before the trial Court. The necessity of the serving Constable reading aloud the proclamation notice in the above mode, was a peremptory, and, unbreachable statutory necessity, and, for evident want of compliance thereto, rather makes the impugned order completely flawed.

9 In consequence, all the apposite statutory ingredients, as carried in Section 82 Cr.P.C. are to be meted conjunctive compliance(s), hence by the serving/executing officer, and or the provisions (supra), are not to be meted compliance only in the alternate, whereas, when hence here, compliance qua all the components carried in sub Section (i) of sub Section

(2) of Section 82 of the Cr.P.C., did not become meted. Therefore, the impugned order is quashed, and, set aside.

10 Moreover, even the impugned order (*supra*), hence suffers from a vice of infirmity. Conspicuously, since the *mens rea* for the commission of an offence under Section 174-A of the IPC, arises only, when the completest compliance, rather becomes meted to all the peremptory statutory injunctions, as carried in the entire component(s) of sub-sub-Section (i) of sub-Section (2), of Section 82 of the Cr.P.C., whereas, when for reasons (*supra*), only a segment thereof remains complied. Therefore, it was rather imperative, for the learned trial Magistrate concerned, to thereafter recourse the mandate of sub-Section (ii) of sub-Section (2) of Section 82 of Cr.P.C., inasmuch as, after his receiving the report of the executing officer, his proceeding, to make an order for the publication of the proclamation notice, in the daily newspaper, hence circulating in the area in which the accused ordinarily reside(s). The learned Magistrate, however, did not after the afore deficit report of the executing officer, being made, recourse the mandate of sub-Section (ii) of sub-Section (2) of Section 82 of Cr.P.C. Consequently, the deficit report of the executing officer could not validly bedrock any further conclusion, that the petitioner ever nursed any penally inculpable, *mens rea*, for an offence under Section 174-A of the IPC.

11 In sequel, the petition is allowed, and, the impugned order of 8.4.2021 (Annexure P-4), as, made by the learned Judicial Magistrate concerned, declaring the petitioner a proclaimed offender, as, also FIR No. 826 of 26.12.2021, registered at Police Station Civil Lines Karnal,

CRM-M-20456-2022 (O&M)

District Karnal, constituting therein an offence under Section 174-A IPC, as well as all the subsequent proceedings, arising therefrom, are quashed, and, set aside.

July 21, 2022.
raj arora/gurpreet

(SURESHWAR THAKUR)
JUDGE

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