

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

124

CRM-M-28053-2022 (O &M)

Date of Decision: 08.07.2022

DALWINDER KUMAR @ GHUGGI @ DALWINDERPETITIONER

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Paras Jagga, Advocate
for the petitioner.

Mr. Harpreet Singh Multani, AAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

CRM-23118-2022

The instant application filed seeking permission to place on record Annexure P-3.

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

Main case

1. The petitioner is an accused in FIR No.376 of 29.10.2019, constituting therein, an offence embodied under Section 379-B of the IPC. The FIR (supra) is registered at Police Station Phillaur, District Jalandhar Rural.

2. After the investigating officer hence holding investigations into

the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C., against the accused concerned, before the learned Magistrate concerned. The petitioner was summoned for his recording his personal appearance before the learned Magistrate concerned. However, it appears, that since service through ordinary mode, upon, the petitioner was not effected, and, when hence the petitioner failed to record his personal appearance, before the learned Magistrate concerned. Therefore, the learned Magistrate concerned, through an order made on 02.12.2020 proceeded to, after accepting the report of the serving constable hence declare the petitioner, as a proclaimed offender, order whereof, becomes extracted hereinafter.

“Proclamation issued against the accused Dalwinder Kumar @ Ghuggi received back with the report of 'effected' on 20.09.2020. Statement of serving official recorded. Case called several time but none has appeared on behalf of accused. Statutory period of 30 days has already been elapsed. So, accused is declared as proclaimed offender. Necessary intimation be sent to the quarter concerned immediately.

No list of property for initiating proceedings U.S. 83 Cr.P.C. has been furnished by the prosecution. No request has been made in this regard. As such, it would be in appropriate to keep the papers pending for an indefinite period. Papers be consigned to the record room and same be again revived as and when accused surrenders before the court or is arrested or brought in the present case.”

3 Therefore, the petitioner is pained, and, is led to institute thereagainst the instant petition, cast under Section 482 Cr.P.C.

4. The serving constable in his report, appended with the petition as Annexure P-3, has therein made, the hereinafter extracted narrations:-

“ It is requested that I HC was present in the village of Dalwinder Kumar @ Ghuggi son of Jeewan Lal resident of Village Dialpura for the proceedings of publication. In this regard, I HC after reaching the village affixed/pasted one copy of publication on the wall outside the house of Dalwinder Kumar, one copy is affixed on the common place of the village and proclamation was got done by some private person of the

village and one copy of the same is affixed on the notice board of the Court. The proceedings of the publication completely complied with.”

5. The above extracted report of the serving constable, does not completely satiate all the components of the mandate, as carried in Section 82 of the Cr.P.C., inasmuch as the serving constable has not made echoings therein, that he apart from, his pasting a copy of the proclamation notice, on the gate of the house of the petitioner, and, one copy at an public place near the locality of the accused, and, the third copy of the notice on the Court concerned, that he also proceeded to, as enjoined by the provisions as carried in sub-Clause (a) of sub-sub-Section (i) of sub-Section (2) of the Section 82 of the Cr.P.C., read it publicly in some conspicuous place of the town or village, in which the accused ordinarily resides. Since the mandate of sub-Clause (a) of sub-sub-Section (i) of sub-Section (2) of the Section 82 of the Cr.P.C., was also to be complied alongwith compliance being meted by the executing officer with Clause (b), and, Clause (c) of sub-sub-Section (i) of sub-Section (2) of Section 82, of the Cr.P.C., whereas, a reading of the apposite report, rather not disclosing that he also meted compliance to Clause (a) of sub-subSection (i) of sub-Section (2) of Section 82, of the Cr.P.C, thereupon, his report is in departure of the statutory injunction (supra), as, became cast upon him. Therefore, since all the provisions carried in sub-Section (i) of sub-Section (2) of Section 82 of the Cr.P.C., are to be cumulatively complied, and, or that all the provisions carried in sub-Section (i) of sub-Section (2) of Section 82 of the Cr.P.C., require(s) theirs being meted the completest conjunctive compliance(s), hence by the serving/executing officer, and or that the provisions (supra) are to be not

meted compliance only in the alternate.

6. Consequently, since in the report, as became relied, upon by the executive 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).

7. In sequel, the petition is allowed, and, the impugned order of 02.12.2020 (Annexure P-2), as, made by the learned Sub Divisional Magistrate, Phillaur, is quashed, and, set aside.

(SURESHWAR THAKUR)
JUDGE

08.07.2022
kavneet singh

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