

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 31601 of 2022

Date of Decision: 22.7.2022

Narinder Kumar

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Ms. Kamlesh, Advocate
for the petitioner.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner is an accused in FIR No. 273 of 30.7.2019, registered at Police Station Phillaur, District Jalandhar, wherein offences constituted under Sections 406, 420 of the IPC, are embodied.

2. After completion of investigations into the petition FIR, the learned Magistrate concerned, assumed jurisdiction, and, also cognizance thereons.

3. Since the ordinary process, issued, upon the petitioner for securing his presence, before the learned Magistrate concerned, did not yield any result, thereupon, the learned Magistrate concerned, through an order, made on 11.12.2019, ordered for the presence of the petitioner, before him, through the issuance, and, execution of non-bailable warrants, upon him. However, the above adoption of coercive process, by the learned Magistrate concerned, also did not yield any result.

4. Consequently, the learned Magistrate concerned, became constrained to make an order hence for serving the petitioner through a

publication notice. However, since as echoed by Annexure P-4, drawn on 15.6.2021, the petitioner did not, despite 30 days elapsing since its making, cause his personal appearance, before the learned Magistrate concerned, thereupon, the learned Magistrate concerned, by making dependence, upon the report of the serving constable, proceeded to declare the present petitioner, a proclaimed person, and, also directed that an intimation in the above regard, be made to the quarter concerned. The petitioner is aggrieved from Annexure P-4, and, is led to make a challenge thereagainst.

5. Irrespective of the fact, that the serving constable, may have adopted the procedures, as contemplated in Section 82 of the Cr.P.C., but the trite fact, as becomes unfolded by the photocopies of the passport of the petitioner, as become placed on record, as Annexure P-2, and, P-3, is that the petitioner had departed from the country on 25.10.2018, and, had arrived back on 4.3.2022. Consequently, the order for serving him through a publication notice, as well as the impugned order, were both made when he was outside the country, therefore, from the above no conclusion other than, his not being validly served, through the proclamation notice rather can become drawn by this Court. In addition, any adoption prior thereto of any ordinary process, and/or of non-coercive process, by the learned Magistrate concerned, to ensure the makings of personal appearance, before him, of the petitioner, were also mis-recoursed processes, as in the face of the petitioner, even during those phases, being outside country, thereupon, he could not be served through the above processes. It appears that only because the serving agency, did not make an appropriate report, in respect of the petitioner being outside country, rather the learned Magistrate concerned, became led to make orders, either for service being caused upon

the petitioner, initially through ordinary process, and, later through coercive process, and, ultimately through the issuance of a proclamation notice, upon the petitioner. Only if an appropriate, and, truthful report, was made by the serving agency, to the learned Magistrate concerned, thereupon, the latter may have been led to ensure the makings of service, upon the petitioner, through the Embassy of India, located in the country where the petitioner was, at the relevant time, holding his abode.

6. Consequently, the petition is allowed, and, the impugned order of 15.6.2021 (Annexure P-4), as, made by the learned Magistrate concerned, and, also all the consequential proceedings, arising therefrom, are quashed, and, set aside.

(SURESHWAR THAKUR)
JUDGE

July 22, 2022
Gurpreet

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