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

CRM-M-42221-2021 (O&M)

Date of decision:07.03.2022

HAMESH KUMAR

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Manu Rattan, Advocate for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

CRM-8283-2022

The instant application has been filed for seeking the permission to place on record Annexures P-7 to P-12.

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

Main case

1. In the instant petition the asked for relief, is for setting aside the order embodied in Annexure P-1 hence declaring the petitioner as a proclaimed offender.

2. The learned counsel for the petitioner presses yet, for the according of the relief appertaining, to the quashing of the order carried in Annexure P-1, wherethrough, the petitioner alongwith other co-accused was declared, as a proclaimed offender. Though, the learned Magistrate concerned, is empowered to after meteing compliances, qua all the statutory provisions engrafted in sub-section 4 of Section 82 of the Cr.P.C., declare a willfully absenting accused to be a proclaimed offender. However, the afore declaration would become valid only

if the statutory provisions occurring prior to sub-section 4 of Section 82 of Cr.P.C., are also completely complied with.

3. The impugned order appears to be made within the ambit of Section 82 of the Cr.P.C. Though, the provisions of sub-section 4 of Section 82 of the Cr.P.C., empowers the learned Magistrate concerned, to after a proclamation being published in the manner, as contemplated in sub-sections 2, and, 3 of Section 82 of the Cr.P.C., to proceed to declare the absconding accused concerned, as a proclaimed offender. Therefore, for testing the validity of the impugned order, it is also necessary to bear in mind, the provisions carried in sub-sections 1, and, 2 of Section 82 of the Cr.P.C. The afore provisions are extracted hereinafter.

“82. Proclamation for person absconding.

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:-

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

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

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

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub- section (2), shall be conclusive

evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.”

5. Though, prior to the making of the impugned order, the learned Magistrate concerned, did proceed to elicit from the serving official concerned, a report with respect to the mandate enclosed in sub-section 2 of Section 82 rather becoming complied with. However, it appears that the report of the serving official concerned, as became relied, upon by the learned Magistrate concerned, is completely outside the domain of sub-section 2 of Section 82 Cr.P.C. The reason being that the serving constable concerned, has made a report that the publication notice, as became received by him, for its being served, upon the accused, resulting in one copy thereof becoming affixed on the residence of the accused, the second copy becoming affixed on the bus stand Dhuri, and, the third copy becoming affixed on the notice board of the Court.

5. However, on a deepest reading of the mandate carried in sub-section 2, it is apparent, that all the provisions carried therein, are to be conjunctively complied with or in other words, there is no scope therein, for the serving official, to rather making fragmentary compliances thereto nor the serving official, can omit to mete compliance with the mandate carried in (i)(a) of sub-section 2 of Section 82 inasmuch as, his omitting to read the publication notice, in some conspicuous place of the town, wherein, the accused person ordinarily resides. However, the report of the serving official is silent, with respect to his meteing compliance qua the afore mandate, as, carried in (i)(a) of sub-section 2 of Section 82 of the Cr.P.C. Significantly the pasting of the proclamation notice at a public place is not co-equivalent to the serving official meteing compliance qua the apposite statutory requirement, inasmuch as, his reading the public proclamation notice at a conspicuous public place. Therefore, since as afore stated, he was rather enjoined to mete compliance with all the

provisions carried in sub-section 2, and, was not to mete compliances only qua a part of the provisions carried therein. Consequently, his report is legally infirm, and, also the reliance, as made thereons, by the learned Magistrate concerned, is not amenable for acceptance.

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

7. Therefore, for the afore reasons, he could not be declared a proclaimed offender. There is merit in the petition, and, is allowed, and, the impugned order of 19.02.2020 is quashed, and, set aside.

8. The petitioner shall forthwith surrender before the learned Magistrate concerned, whereupon, the latter shall make orders in accordance with law. If the NBWs are not issued, they may not be issued, and, if the NBWs are issued thereupon they are ordered to be forthwith recalled.

9. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

07.03.2022

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Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No