

In the High Court of Punjab and Haryana at Chandigarh

**CRM-M No. 53563 of 2021
Date of Decision: 18.4.2022**

Shamsher Singh @ Bhinda

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. H.S.Dhindsa, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner herein is an accused in FIR No. 84 of 29.6.2009, registered at Police Station Raikot, District Ludhiana, wherein, offences constituted under Sections 121, 121-A, 123, 153, 153-A, 120-B IPC, and, under Sections 4, and, 5 of the Explosive Act, 1908, are embodied.

2. After completion of investigations into the FIR (supra), by the investigating officer concerned, an affirmative report under Section 173 Cr.P.C., became instituted before the learned Sessions Judge, Ludhiana. Consequently, the learned trial Judge concerned, proceeded to issue processes for securing the presence, before him, of the petitioner herein. It appears that since the ordinary processes, as, became resorted to by the learned trial Judge, for securing the presence of the petitioner, before him, did not yield the requisite results, thereupon, the learned trial Judge, proceeded to issue a proclamation notice, upon the petitioner herein, and,

directed the serving constable concerned, to cause service thereof, upon the petitioner herein.

3. The serving constable proceeded to mete compliance thereto, and, made his report, which becomes embodied in Annexure P-5, and, relevant portion whereof becomes hereinafter extracted.

“That proclamation of accused Shamsher Singh in this case was marked to me. On 20.1.2011, I went to the given address of the accused. I pasted one copy each at house of the accused and one each copy I pasted each at the conspicuous place of the area. One copy I pasted at the notice board of this Hon'ble Court. Copy of proclamation for accused Shamsher Singh is Ex. P1. My report in this regard is Ex. P-2.”

4. Even though, since the petitioner herein did not, even after 30 days elapsing, since 20.1.2011, when the serving constable made an effort to cause service of proclamation notice, upon the petitioner, rather make his personal appearance before the learned trial Judge concerned, therefore, the learned trial Judge concerned, proceeded to declare the petitioner as a proclaimed offender.

5. The order declaring the petitioner herein as a proclaimed person, as carried in Annexure P-6, is challenged before this Court. A reading of the above extracted portion of the report, as made before the learned trial Judge concerned, by the serving constable, does not completely satiate of all the components of the mandate, as carried in Sub Section (1) of Section 82 of the Cr.P.C, whereas, all the ingredients of every component thereof, was required to be meted the completest compliance. The reason for making the afore conclusion, arises from the factum, that the above extracted report of the serving constable, does not reveal, that apart from,

his doing acts as narrated in Annexure P-5, his also reading the

proclamation notice at some conspicuous place of the locality where the accused was residing. Therefore, since all the components of Sub Section (1) of Section 82 of the Cr.P.C., did not become meted compliance, whereas the completest compliance thereof, was required to be meted. Therefore, the report of the serving constable, as carried in Annexure P-5 is defective, and, also the reliance placed thereons, in the impugned order, as carried in Annexure P-6, also becomes concomitantly legally defective.

6. Be that as it may, since Annexure P-4-A, reveals that on 20.1.2011, the petitioner herein was in Germany, especially when he moved to Germany on 1.7.2009, and, it is also revealed therein, that he never thereafter egressed therefrom to India, thereupon, neither any coercive processes were amenable for being personally served upon the petitioner in India, nor also obviously any ordinary processes were amenable to be served upon the petitioner in India, rather both ordinary, and, coercive processes, were amenable to be personally served, upon, the petitioner hence through the Embassy of India, located in Germany. Therefore, even on the above score, the report of the serving constable, and, also the impugned order are defective, and, are amenable to be quashed, and, set aside.

7. Consequently, the impugned order is quashed, and, set aside, qua the petitioner. The petitioner is directed to make his surrender before the learned trial Judge concerned, and, upon the petitioner making his surrender before the learned trial Judge concerned, the latter shall proceed to, in accordance with law, make appropriate orders. However, if the petitioner omits to surrender before the learned trial Judge concerned, it is open to the State of Punjab, to forthwith launch extradition processes qua

the petitioner from Germany to India for his facing trial with respect to the FIR (supra).

8. The petition is disposed of.

(SURESHWAR THAKUR)
JUDGE

April 18, 2022
Gurpreet

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