

***Before Sureshwar Thakur, J.***  
**GURPREET SINGH**—*Petitioner*  
*versus*  
**SWARAN SIGNH**—*Respondents*  
**CRM-M No.701 of 2022**

January 13, 2022

***Negotiable Instruments Act, 1881—S.138—Code of Criminal Procedure, 1973—S.82—petitioner not residing in the country on which date the notice pasted outside his residence—Mandate of Section 82 not followed—order to register FIR quashed.***

*Held that*, even though, a reading of the afore made report of the serving constable, which resulted in its being relied, upon, by the learned Magistrate concerned, in the latter proceeding to make the order of 16.03.2019, is made in compliance with the mandate of Section 82 of the Cr.P.C. However, since it is averred in para-2 of the petition, that at the relevant time, of the serving constable proceeding to execute the proclamation notice, the petitioner being outside India, thereupon the apposite awakening to him of the intimation, as, made by the serving constable, cannot be concluded to beget any knowledge in the mind of the petitioner, about the date of the lis concerned, before the learned Magistrate concerned. It appears, that without believing the afore averment, supported by an affidavit, rather the impugned order yet depended upon the infirm report of the serving constable, and, hence becomes ridden with a vice of infirmity, as it was incumbent, upon the learned Magistrate concerned, to ensure, that prior thereto especially in the month of December, his eliciting a report of the serving officer, whether the petitioner was residing at his abode, as mentioned against his name, in the memo of parties. The learned Magistrate concerned, has not ensured that the serving officer, at the afore stage, visited the abode of the petitioner, and, also has not ensured whether at the relevant time, the petitioner was residing at the abode, as mentioned against him name, in the memo of parties, in the complaint concerned.

(Para 3)

*Further held that*, the afore lack of diligence, and, of application of mind on the part of the learned Magistrate concerned, has resulted in the learned Magistrate concerned, rather untenably concluding that at the relevant time of the serving constable executing the proclamation,

his prima facie, complying with the mandate of Section 82 of the Cr.P.C., whereas, as averred, on affidavit in the petition, he was outside India, and, hence became not awakened qua the factum of the serving constable, intimating him, in the manner as detailed in his report, as, made to the learned Magistrate concerned, about the date of his being required, to cause his personal appearance before the learned Magistrate concerned. Therefore, the service of the proclamation notice never became validly caused upon the petitioner.

(Para 4)

*Further held that*, therefore, the impugned order is quashed and set aside. The petitioner is directed to make, within a week hereafter, his surrender before the learned Magistrate concerned. Till the petitioner makes his surrender before the learned Magistrate concerned, no coercive steps, be drawn, against the petitioner. However, upon the petitioner making his surrender before the learned Magistrate concerned, the latter shall, in accordance with law, proceed to make appropriate orders.

(Para 5)

Jasdeep Singh Gill, Advocate  
*for the petitioner.*

## **SURESHWAR THAKUR, J. (ORAL)**

### **CRM-922-2022**

(1) The prayer in the present application under Section 482, of the Cr.P.C., as, moved by the learned counsel for the petitioner, is for placing on record the true typed copy of statement of HC Kulwinder Singh, as Annexure P-7.

(2) As prayed for, the application is allowed. The afore document / copy of statement of HC Kulwinder Singh, is taken on record as AnnexureP-7.

(3) Registry to place the same at an appropriate place in the paper- book, and, paginate accordingly.

### **MAIN CASE**

(4) The petitioner is to face notice of accusation for an offence constituted under Section 138 of the Negotiable Instruments Act. For the above notice of the accusation, being put to him, the learned Judicial Magistrate concerned, ordered for his being served through the relevant process of law. However, it appears that the

attempts, as, made on the part of the learned Magistrate concerned, to procure the presence of the petitioner, before him, through recouring the process of law, resulted in complete failure.

(5) Consequently, the learned Magistrate concerned, after recouring other processes of law to ensure the personal appearance, before him, of the petitioner, and, with all such processes also resulting in complete failure, hence he proceeded to place reliance, upon the statement of the serving constable, statement thereof is extracted hereinafter, and, thereafter proceeded to make an order on 16.03.2019, where through not only a direction was made, upon the SHO concerned, to register an FIR against the petitioner under the relevant provisions of the IPC, given the petitioner purportedly intentionally avoiding service, being caused upon him, and also ordered for the launching of proceedings under Section 83 of the Cr.P.C. Moreover, the preliminary evidence of the complainant was ordered to be read as evidence under Section 299 Cr.P.C.

“ Statement of HC Kulwinder Singh No. 3252, CP on SA. I was entrusted with the proclamation of accused Gurpreet Singh, S/o Nachhatar Singh, R/o Baruwala, Muktsar on 14.02.2019. I visited the given address, the accused was not found present there. I pasted one copy of the proclamation on the given address. Thereafter, I pasted one copy at the local bus stand and one copy at the notice board of District Courts and announcement of the proclamation is made out in the public. The proclamation is Ex. PA and my report is Ex. PB which is correct. ”

(6) Even though, a reading of the afore made report of the serving constable, which resulted in its being relied, upon, by the learned Magistrate concerned, in the latter proceeding to make the order of 16.03.2019, is made in compliance with the mandate of Section 82 of the Cr.P.C. However, since it is averred in para-2 of the petition, that at the relevant time, of the serving constable proceeding to execute the proclamation notice, the petitioner being outside India, thereupon the apposite awakening to him of the intimation, as, made by the serving constable, cannot be concluded to beget any knowledge in the mind of the petitioner, about the date of the *lis* concerned, before the learned Magistrate concerned. It appears, that without believing the afore averment, supported by an affidavit, rather the impugned order yet depended upon the infirm report of the serving constable, and, hence becomes ridden with a vice of infirmity, as it was incumbent,

upon the learned Magistrate concerned, to ensure, that prior thereto especially in the month of December, his eliciting a report of the serving officer, whether the petitioner was residing at his abode, as mentioned against his name, in the memo of parties. The learned Magistrate concerned, has not ensured that the serving officer, at the afore stage, visited the abode of the petitioner, and, also has not ensured whether at the relevant time, the petitioner was residing at the abode, as mentioned against him name, in the memo of parties, in the complaint concerned.

(7) The afore lack of diligence, and, of application of mind on the part of the learned Magistrate concerned, has resulted in the learned Magistrate concerned, rather untenably concluding that at the relevant time of the serving constable executing the proclamation, his prima facie, complying with the mandate of Section 82 of the Cr.P.C., whereas, as averred, on affidavit in the petition, he was outside India, and, hence became not awakened qua the factum of the serving constable, intimating him, in the manner as detailed in his report, as, made to the learned Magistrate concerned, about the date of his being required, to cause his personal appearance before the learned Magistrate concerned. Therefore, the service of the proclamation notice never became validly caused upon the petitioner.

(8) Therefore, the impugned order is quashed and set aside. The petitioner is directed to make, within a week hereafter, his surrender before the learned Magistrate concerned. Till the petitioner makes his surrender before the learned Magistrate concerned, no coercive steps, be drawn, against the petitioner. However, upon the petitioner making his surrender before the learned Magistrate concerned, the latter shall, in accordance with law, proceed to make appropriate orders.

(9) Disposed of.

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*Inder Pal Singh Doabia*