

*Before Sureshwar Thakur, J.*

**RAHUL DUREJA AND ANOTHER—Petitioners**

*versus*

**STATE OF PUNJAB—Respondents**

**CRM-M No.51182 of 2021**

December 10, 2021

*Code of Criminal Procedure, 1973—S.174-A and 82—Negotiable Instruments Act, 1881—S.138—Quashing of an FIR on merits—Allowed—held, the mens-rea for the commission of an act under Section 174A, IPC, arises only when there is complete compliance of S.82(2)(i) Cr.P.C. i.e. to provide complete knowledge of the proclamation notice publicly—The Magistrate thereafter must take recourse to the mandate of Section 82(2)(ii) i.e. by ordering publication in newspaper etc.—In the present case, there was no endeavour by the executing officer to serve proclamation notice.*

*Held that, 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, not disclosing that he had also meted compliance to Clause (a) of sub-sub Section (i) of sub-Section (2) of Section 82, of the Cr.P.C, thereupon, his report is in departure of the statutory injunction, as therethrough, became cast upon him.*

(Para 6)

*Further held that, learned Magistrate, however, did not after the afore deficit report of the executing officer, being made, recourse the mandate of sub-Section (ii) of sub-Section (2) of Section 82 of Cr.P.C. Consequently, the deficit report of the executive officer could not validly bedrock any further conclusion, that the petitioners ever nursed any penally inculpable, mens rea, for an offence under Section 174-A of the IPC.*

(Para 7)

Kunwar Rajan, Advocate  
*for the petitioners.*

C.L. Pawar, Sr. D.A.G., Punjab.

**SURESHWAR THAKUR, J. (oral)**

(1) The petitioners are alleged to commit an offence under Section 138 of the Negotiable Instruments Act (in short “the NI Act”). An apposite complaint is filed against him, and, is subjudice before the Court of JMIC, Malout. After the recording of the complainant's preliminary evidence, the learned trial Magistrate concerned, made an objective satisfaction, that, prima facie an offence under Section 138 of the NI Act, is made out against the accused, hence proceeded to make a summoning order, upon, the accused-petitioner herein.

(2) The petitioners, did not, on the date mentioned in the summons, cause their personal appearance before the learned trial Magistrate concerned. Moreover, also the attempt, as, made by the learned trial Magistrate concerned, to secure their personal appearance, before him, through issuances, respectively of, bailable, and, thereafter of non-bailable warrants, remained futile. Consequently, the learned Magistrate concerned, through an order made on 06.03.2018, hence enclosed with the petition as Annexure P-2, recorded an objective satisfaction that the petitioners are intentionally and deliberately avoiding to cause their personal appearance, before him, hence proceeded to make an order, for their being summoned through a proclamation, which was ordered to be made returnable for 30.04.2018.

(3) The learned Magistrate concerned, also proceeded to appoint a police official, for causing execution of the afore made order. The police official concerned, had on visiting the premises of the accused concerned, made a report to the effect, that on 23.04.2018, he alongwith MC Gurmeet Singh, raided the house of the accused, and, that since at the relevant time, he had found the house of the accused to be locked, and, hence thereafter his proceeding to affix a copy of the proclamation notice, upon the main gate of the house of the accused, and, another copy become affixed at the main gate of M/s Dureja Rice Mills, and, besides one copy, became appended at Judicial Court Complex. The learned Magistrate concerned, after considering the afore made report, of the police official concerned, made an objective conclusion, that since the period of 30 days has elapsed, since the making of the order of 06.03.2018, thereupon, a direction was made, upon the SHO concerned, for registration of an FIR against the accused / M/s. Dureja Rice Mills, hence under Section 174-A of the Cr.P.C.

(4) The petitioners are the partners of the firm M/s. Dureja Rice Mills.

(5) The order carried in Annexure P-4 is challenged, and, also is strived to be quashed by the petitioners, who are the partners of M/s. Dureja Rice Mills, through their recouring the mandate of Section 482 of the Cr.P.C. The petitioners would succeed in their endeavour (supra) in case, upon a reading, of the report of the serving / executing officer, as carried in Annexure P-6, and, which became depended, upon by the learned Magistrate concerned, to proceed to draw the impugned order, as, carried in Annexure P-4, suffers from a gross perversity, and, infirmity, inasmuch as its breaching the mandate of sub-Section (2) of Section 82 of the Cr.P.C.. In making a determination, whether the mandate occurring in sub-Section (2) of Section 82 of the Cr.P.C. has been breached, or not, by the learned Magistrate concerned, in his making the impugned order, it becomes imperative to extract provisions thereof, provisions whereof become extracted hereinafter. Importantly so, as on a deep reading thereof(s), all the ingredients carried therein, are required to be completely complied with, both by the executing officer concerned, who made a report, borne in Annexure P-6, and, also are to be reflected, to be complied with, in the impugned order, as made by the learned Magistrate concerned. A circumspect and deepest reading, of the hereinafter extracted relevant portion of sub-Section (2), discloses that the notice of proclamation, is required to be given effect to, or is required to be peremptorily executed in the mode enshrined therein, as its salutary purpose is to bring an awakening in the persons concerned, who purportedly deliberately avoid causing of valid service, upon him / them, for any relevant purpose, rather about the date(s) mentioned therein. Since the afore awakening, carried in sub-Section (2), would ensure that may be hence they cause his / their appearance(s) before the Court concerned, as, also hence would obviate the drawings of further stigmatic proceedings contemplated, under Section 83 of the Cr.P.C., by the Court concerned. Therefore, 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 completest conjunctive compliance by the serving / executing officer, and or that the provisions (supra) are to be not meted compliance in the alternate.

“82. Proclamation for person absconding.

(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.

(6) Consequently, in the report, as became relied, upon by the executive officer as borne in Annexure P-6, and, as became depended upon by the learned Magistrate concerned, to make the impugned order, disclosure are to 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, completest compliance, without any of them remaining uncomplied with. However, though the serving executing officer has in his report, made a disclosure that he had on finding, the house of the accused to be locked, at the relevant time, hence affixed, one copy of the proclamation on the main gate of the house of the accused, and, also made disclosure, that one copy of the proclamation became appended, at the main gate of M/s. Dureja Rice Mills, and, besides one copy became appended at the Judicial Court complex. However, a reading of the afore report, does not disclose, that he had also, as enjoined by the provisions (supra), 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 along with 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, not disclosing that he had also meted compliance to Clause (a) of sub-sub-Section (i) of sub-Section (2) of Section 82, of the Cr.P.C, thereupon, his report is in departure of the statutory injunction, as therethrough, became cast upon him. Consequently, the knowledge of the proclamation notice, was not hence completely acquired by the petitioners, and, also the endeavour of the executing officer to serve the proclamation notice, upon the accused, is completely deficit on score (supra).

(7) Be that as it may, even the impugned order (*supra*), hence suffers from a vice of infirmity. Conspicuously, since the mens rea for the commission of an offence under Section 174-A of the IPC, arises only, when the completest compliance, rather becomes meted with the peremptory statutory injunctions carried, in the entire component(s) of sub-sub-Section (i) of sub-Section (2), of Section 82 of the Cr.P.C., whereas, when for reasons (*supra*), a segment thereof remains uncomplished. Therefore, It was rather imperative, for the learned trial Magistrate concerned, to thereafter recourse the mandate of sub-Section (ii) of sub-Section (2) of Section 82 of Cr.P.C., inasmuch as, after his receiving the report of the executing officer, his proceeding, to make an order for publication of the proclamation notice, in the daily newspaper, hence circulating in the area in which the accused ordinarily reside(s). The learned Magistrate, however, did not after the afore deficit report of the executing officer, being made, recourse the mandate of sub-Section (ii) of sub-Section (2) of Section 82 of Cr.P.C. Consequently, the deficit report of the executive officer could not validly bedrock any further conclusion, that the petitioners ever nursed any penally inculpable, mens rea, for an offence under Section 174-A of the IPC.

(8) In view of the above, the petition is allowed, and, FIR No. 131 of 25.10.2018 registered at Police Station Sadar, Malout, constituting therein an offence under Section 174-A of the IPC, as well as subsequent proceedings arising therefrom, are quashed.

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*Payel Mehta*