

Court No. - 75

Case :- APPLICATION U/S 528 BNSS No. - 25430 of 2025

Applicant :- Suresh Chandra

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Ravindra Kumar Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Vikas Budhwar,J.

Heard Sri Ravindra Kumar Yadav, learned counsel for the applicant as well as Sri S.P. Singh, learned State Law officer for the State.

This is an application filed U/s 528 BNSS for a direction to the court of Upper Civil Judge (J.D.) New Court No.11, Jaunpur to conclude the proceeding of complaint case no. 133 of 2022, U/s 138 of N.I. Act (Suresh Chandra vs. Santosh Vishwakarma), P.S. Line Bazar, District Jaunpur within a stipulated period of time.

Earlier the applicant has preferred an application U/s 482 Cr.P.C. No. 3968 of 2024 (Suresh Chandra vs. State of U.P. and another) in which on 31.07.2024 the following order was passed:

"1. Heard Sri Ravindra Kumar Yadav, learned counsel for the applicant and Sri Rajiv Kumar Singh, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking direction for expeditious disposal of Complaint Case No. 133 of 2024 (Suresh Chandra vs. Santosh Vishwakarma) under Section 138 of the Negotiable Instruments Act, 1881 (in short, 'the N.I. Act'),, P.S.- Line Bazar, District-Jaunpur, pending in the court of learned Civil Judge (J.D.)/Judicial Magistrate-Ist, Jaunpur, within stipulated period of time.

3. On 02.04.2024, this Court has passed the following order:

"1. Heard learned counsel for the applicant and Sri Pushpendra Singh Jadon, learned AGA for the State.

2. Present application under Section 482 Cr.P.C. has been filed to direct the Civil Judge (J.D)/ Judicial Magistrate 1st, Jaunpur to conclude the proceeding of Complaint Case No.133 of 2022, under Section 138 N.I. Act, Police Station Line Bazar, District Jaunpur within stipulated period.

3. From perusal of record, it appears that this Court vide order dated 22.02.2024 directed to learned AGA to seek instructions as to why the NBW

issued against accused has not been executed.

4. In compliance of the order of this Court, till date no instruction has been supplied despite the information given by the learned AGA on 22.02.2024.

5. In view of above, learned AGA is granted two weeks' further time to file personal affidavit of the concerned investigating officer explaining the reason why the non-bailable warrant issued against the accused has not been executed.

6. It is made clear that if the concerned I.O. fails to file affidavit in compliance of order of this Court, he will appear personally along with record of this case.

7. Put up this case as fresh in the week commencing 15th April, 2024."

4. Again, on 18.04.2024, this Court has passed the following order:

"1. Personal affidavit of the S.H.O. concerned, filed by learned A.G.A., is taken on record.

2. Heard learned counsel for the applicant and Sri Ramesh Kumar, learned A.G.A. for the State.

3. The Present application under Section 482 Cr.P.C. has been filed to direct the Civil Judge (J.D)/Judicial Magistrate 1st, Jaunpur to conclude the proceeding of Complaint Case No.133 of 2022, under Section 138 N.I. Act, Police Station Line Bazar, District Jaunpur within stipulated period.

4. From the perusal of the record, it appears that this Court by order dated 22.2.2024, directed the learned A.G.A. to seek instructions as to why the N.B.W., issued to opposite party No.2/accused, had not been executed. However, no instructions were supplied despite the information given by learned A.G.A. on 22.2.2024. Thereafter, this Court by order dated 2.4.2024 directed the concerned I.O. to file his personal affidavit, explaining the reason as to why the N.B.W., issued against opposite party No.2, could not be executed.

5. In compliance of the order dated 2.4.2024, Mr. Kishore Kumar Chaubey, Station House Officer, P.S. Line Bazar, District Jaunpur, has filed his personal affidavit, mentioning therein that till date he could not trace out opposite party No.2 as he had left the place where he was residing and her mother also told the police that he was missing for the last four years.

6. Execution of the N.B.W. is the duty of the police. However, in the personal affidavit of the concerned S.H.O. a flimsy ground has been taken that the mother of the accused told that the accused was missing for the last four years.

7. In such circumstances, this Court has no other option but to direct the Superintendent of Police, Jaunpur to personally ensure the execution of the N.B.W., issued against opposite party No.2 and after his arrest, produce him

before the court concerned within a period of three weeks, failing which the Superintendent of Police, Jaunpur shall remain personally present before this Court to explain the reason as to why the N.B.W. has not been executed.

8. List on 13.5.2024 as fresh. "

5. Again, on 13.05.2024, this Court has passed the following order:

"1. Heard learned counsel for the applicant and Sri Ramesh Kumar, learned A.G.A. for the state.

2. From perusal of the order sheet, it appears that despite issuance of N.B.W. against opposite party No.2 (accused), the police could not arrest the accused in the present case, then the coordinate Bench of this Court by order dated 22.2.2024 directed the learned A.G.A. to seek instructions as why the N.B.W., issued against the accused, could not be executed. Thereafter, this case was again listed on 2.4.2024, however, till that date, no instruction was supplied to learned A.G.A., then this Court directed the concerned I.O. to file his personal affidavit, explaining the reason for non execution of said N.B.W. against the accused. Thereafter, this case was taken up on 18.4.2024 on that date a personal affidavit was filed by the S.H.O., P.S. Line Bazar, Jaunpur, mentioning therein that they were trying to arrest the accused but the mother of the accused had informed them that the accused had been missing for the last four years and for that reason accused could not be traced out. When this Court was not satisfied with the explanation of the S.H.O., then this Court by order dated 18.4.2024 directed the S.P. Jaunpur to personally ensure the execution of the N.B.W. against opposite party No.2 (accused) with further direction that after his arrest the accused should be produced before the concerned within a period of three weeks, failing which he would be personally present before this Court to explain the reason for non-execution of the N.B.W.

3. Today, learned A.G.A. has produced a copy of the General Diary, mentioning therein that the police has been searching the opposite party No.2 (accused), but he could not be traced out. However, today neither the S.P., Jaunpur nor any of his immediate subordinates has appeared before this Court.

4. This act of S.P., Jaunpur is absolutely contemptuous. Once the High Court gave opportunity to the concerned police officer to comply with the order or to appear personally before this Court personally, then it is the duty of the concerned police officer either to comply the order or appear before this Court to explain the reason as to why the order could not be complied with, but merely sending certain documents through Head Constable or Constable will not only amount to disobedience of the order of the Court but also disrespect to the Court.

5. This Court is conscious of the Standard Operating Procedures (SOP), issued by the Hon'ble Supreme Court in the case of State of U.P. and others vs. Association of Retired Supreme Court and High Court Judges at Allahabad and others; Civil Appeal No. 23-24 of 2024. The SOP for personal appearance laid down by the Apex Court in paragraph No.45 is being quoted as under:-

"Standard Operating Procedure (SOP) on Personal Appearance

of Government Officials in Court Proceedings

This Standard Operating Procedure is applicable to all court proceedings involving the government in cases before the Supreme Court, High Courts and all other courts acting under their respective appellate and/or original jurisdiction or proceedings related to contempt of court.

1. Personal presence pending adjudication of a dispute

1.1 Based on the nature of the evidence taken on record, proceedings may broadly be classified into three categories:

- a. Evidence-based Adjudication: These proceedings involve evidence such as documents or oral statements. In these proceedings, a government official may be required to be physically present for testimony or to present relevant documents. Rules of procedure, such as the Code of Civil Procedure, 1908, or Criminal Procedure Code 1973, govern these proceedings.*
- b. Summary Proceedings: These proceedings, often called summary proceedings, rely on affidavits, documents, or reports.*

They are typically governed by the Rules of the Court set by the High Court and principles of Natural Justice.

- c. Non-adversarial Proceedings: While hearing nonadversarial proceedings, the court may require the presence of government officials to understand a complex policy or technical matter that the law officers of the government may not be able to address.*

1.2 Other than in cases falling under para 1.1(a) above, if the issues can be addressed through affidavits and other documents, physical presence may not be necessary and should not be directed as a routine measure.

1.3 The presence of a government official may be directed, inter alia, in cases where the court is prima facie satisfied that specific information is not being provided or is intentionally withheld, or if the correct position is being suppressed or misrepresented.

1.4 The court should not direct the presence of an official solely because the official's stance in the affidavit differs from the court's view. In such cases, if the matter can be resolved based on existing records, it should be decided on merits accordingly.

2. Procedure prior to directing personal presence

2.1 In exceptional cases wherein the in-person appearance of a government official is called for by the court, the court should allow as a first option, the officer to appear before it through video conferencing.

2.2 The Invitation Link for VC appearance and viewing, as the case may be, must be sent by the Registry of the court to the given mobile no(s)/e-mail id(s)

by SMS/email/WhatsApp of the concerned official at least one day before the scheduled hearing

2.3 When the personal presence of an official is directed, reasons should be recorded as to why such presence is required.

2.4 Due notice for in-person appearance, giving sufficient time for such appearance, must be served in advance to the official. This would enable the official to come prepared and render due assistance to the court for proper adjudication of the matter for which they have been summoned.

3. Procedure during the personal presence of government officials: In instances where the court directs the personal presence of an official or a party, the following procedures are recommended:

3.1 Scheduled Time Slot: The court should, to the extent possible, designate a specific time slot for addressing matters where the personal presence of an official or a party is mandated.

3.2 The conduct of officials: Government officials participating in the proceedings need not stand throughout the hearing. Standing should be required only when the official is responding to or making statements in court.

3.3 During the course of proceedings, oral remarks with the potential to humiliate the official should be avoided.

3.4 The court must refrain from making comments on the physical appearance, educational background, or social standing of the official appearing before it.

3.5 Courts must cultivate an environment of respect and professionalism. Comments on the dress of the official appearing before the court should be avoided unless there is a violation of the specified dress code applicable to their office.

4. Time Period for compliance with judicial orders by the Government

4.1 Ensuring compliance with judicial orders involving intricate policy matters necessitates navigating various levels of decision making by the Government. The court must consider these complexities before establishing specific timelines for compliance with its orders. The court should acknowledge and accommodate a reasonable timeframe, as per the specifics of the case.

4.2 If an order has already been passed, and the government seeks a revision of the specified timeframe, the court may entertain such requests and permit a revised, reasonable timeframe for the compliance of judicial orders, allowing for a hearing to consider modifications.

5. Personal presence for enforcement/contempt of court proceedings

5.1 The court should exercise caution and restraint when initiating contempt

proceedings, ensuring a judicious and fair process.

5.2 Preliminary Determination of Contempt: In a proceeding instituted for contempt by wilful disobedience of its order, the court should ordinarily issue a notice to the alleged contemnor, seeking an explanation for their actions, instead of immediately directing personal presence.

5.3 Notice and Subsequent Actions: Following the issuance of the notice, the court should carefully consider the response from the alleged contemnor. Based on their response or absence thereof, it should decide on the appropriate course of action.

Depending on the severity of the allegation, the court may direct the personal presence of the contemnor.

5.4 Procedure when personal presence is directed: In cases requiring the physical presence of a government official, it should provide advance notice for an in-person appearance, allowing ample time for preparation. However, the court should allow the officer as a first option, to appear before it through video conferencing.

5.5 Addressing Non-Compliance: The court should evaluate instances of non-compliance, taking into account procedural delays or technical reasons. If the original order lacks a specified compliance timeframe, it should consider granting an appropriate extension to facilitate compliance.

5.6 When the order specifies a compliance deadline and difficulties arise, the court should permit the contemnor to submit an application for an extension or stay before the issuing court or the relevant appellate/higher court."

6. In the present case the S.P., Jaunpur did not even file any application for exemption of his presence before this Court. In such circumstances and taking into consideration the SOP issued by the Apex Court, this Court has no other option except to direct the S.P. Jaunpur to appear personally before this Court on 20.5.2024 at 10:00 A.M. to explain his conduct.

7. Put up this case on 20.5.2024 as fresh at 10:00 AM. "

6. In pursuance of the order dated 13.05.2024, a detailed personal affidavit has been filed by S.P. Jaunpur on 20.05.2024, which was taken on record, according to which continuous efforts have been made to trace out the accused opposite party no.2, however, his location as per the mobile numbers traced by the police team is shown as AE @ United Arab Emirates. In view thereof, the non-bailable warrants could not be executed against the opposite party no.2 till date.

7. In view of the aforesaid developments in the case, the instant application is disposed of with a direction that a copy of the personal affidavit filed by the Superintendent of Police, Jaunpur alongwith the documents annexed thereto, shall be forwarded to the trial court concerned so that it may proceed in the matter expeditiously, in accordance with law. "

Learned State Law Officer submits that it is a second application which would not maintainable.

I have heard the submissions so made across the bar and perused the record carefully.

In the opinion of the Court once an order came to be passed in the aforementioned application, then the Court is to abide by the same until and unless there is any legal impediment. Thus, it is for the applicant to produce the said order before the court below and insist for speedy disposal in terms of sub-Section 3 of section 143 of N.I. Act.

With the aforesaid observation, the present application is consigned to record.

Order Date :- 28.7.2025

C. MANI

(Vikas Budhwar,J.)