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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 10th August, 2015

+ **CRL.M.C. No.4024/2014**

NAVEEN MALHOTRA AND ANOTHER

..... Petitioners

Represented by: Mr.Vikas Pahwa, Senior
Advocate with Mr.O. P.
Gulabani, Ms.Ashta Sharma
and Mr.Vipul Sharma, Advs

versus

THE STATE AND ANR

..... Respondents

Represented by: Ms.Meenakshi Chauhan,
APP for the State.
Mr.Rishi Sood, Adv for R2.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. By way of this petition filed under Section 482 of the Code of Criminal Procedure, 1973, petitioners seek a direction thereby setting aside the order dated 29.08.2014 passed by learned Additional Sessions Judge-03, Dwarka Courts, New Delhi and the order dated 20.06.2014 passed by learned Magistrate.

2. Vide order dated 08.10.2013, summons were ordered to be issued against the petitioners for the offences punishable under Section 138 of the NI Act. In said order, it is specifically mentioned that in case of non-

availability / refusal or evasion, accused be served by way of affixation. Accordingly, the service report was filed wherein recorded that it was verbally stated by the employee that employer was not at home and they had gone out without leaving any information about their return. It is further stated that as per the orders of the Court, the summons have been affixed at the gate. Accordingly, vide order dated 18.11.2013, bailable warrants were issued against the petitioners. Despite appeared none on their behalf, therefore, vide order dated 19.12.2013, learned Magistrate issued NBWs. However, appeared none, thereafter, vide order dated 07.02.2014, process under Section 82 of the Cr P C issued against the petitioners.

3. After recording the statement of the process servers that house was found locked and the petitioners left the said house long back without leaving any other details of their present address. Therefore, vide dated 20.07.2014, learned Magistrate directed to lodge the FIR against the petitioners under Section 174A of the IPC. The petitioners are aggrieved by the said order, hence, present petition.

4. Mr.Vikas Pahwa, learned Senior Advocate appearing on behalf of petitioners submit that it was the duty of the respondent No.2/ complainant to serve the petitioners at their correct address. In the first report, it was noticed that petitioners had left the said address long back and not residing there, then there was no was question to affix the summons and passing of the impugned order against them.

5. He further submits that as per Section 62 to 65 of the Cr P C, the steps by steps order was required to be passed by learned Trial Court,

however, learned Judge surpassed the provisions and passed the order hurriedly.

6. Learned Senior Advocate further submits that the petitioners are ready to join the proceedings as petitioners are very much available on the address given. It has categorically stated that the address given in this petition is correct one and both the petitioners are available at the said addresses.

7. Though, I do not find any discrepancy in the orders passed by learned Trial Court as well as learned Revisional Court, however, keeping in view the fact that the petitioners admittedly are not residing since long at the earlier addresses and they were never served at the correct address, I hereby set aside the order dated 20.06.2014 passed by learned Magistrate and order dated 29.08.2014 passed by learned Additional Sessions Judge—03, Dwarka Courts, New Delhi, subject to cost of Rs.50,000/- each to be paid within four weeks by petitioners to respondent No.2/ complainant. The petitioners are further directed to intimate the learned Trial Court as and when they shift from the given address.

8. In terms of above directions, present petition stands disposed of.

Crl.M.A.13802/2014

Dismissed as infructuous.

**SURESH KAIT
(JUDGE)**

AUGUST 10, 2015

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