

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-54332-2018 [O&M]

Date of Decision : December 11, 2018

Rajveer

.... Petitioner

Versus

Jai Shree Trading Company Pvt. Limited
and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Mr. Tarun Singla, Advocate,
for the petitioner.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure (for short, "the Code") is for quashing of order dated 6.7.2018 (Annexure P/7), passed by learned Judicial Magistrate Ist Class, Chandigarh in a Criminal Complaint titled **Jai Shree Trading Company Vs. M/s Mittu Sons** under Section 138 of the Negotiable Instruments Act, 1881 (for short, "**the Act**") dated 26.10.2017 on the ground that learned Magistrate has not followed the procedure laid-down in the Code.

2. Learned counsel for the petitioner contended that vide order dated 28.10.2017, petitioner was summoned to face trial and the summons were sent through process as well as registered post for 6.2.2018 and the service of summons was not effected as required under Section 62 of the Code and even compliance of Sections 64 and 65 of the Code was not made.

3. Learned counsel for the petitioner further contended that the petitioner had left India on 29.11.2017 and returned to India on 2.3.2018 and again on 2.3.2018, the petitioner left for Canada and returned India on 7.11.2018. As such, there was no question of refusal to accept the same. There is nothing on the record to record the finding that summons were duly served and there is no question of issuance of any warrant. On 7.11.2018 when the petitioner returned to India, he came to know about proclamation having been issued against him and thereafter filed the present petition before this Court.

4. Learned counsel for the petitioner further contended that the petitioner is residing at a place which is situated at a distance of 235 Kms from Chandigarh, the place where summons/warrant were ordered to be issued. He further submitted that the petitioner is ready to appear before learned trial Court and is ready to furnish bail bonds and the order regarding his proclamation be set-aside.

5. Learned counsel for the petitioner placed reliance upon Division Bench Judgment of Hon`ble Bombay High Court in **Sandip Shankarlal Kedia Vs. The State of Maharashtra and another, 2015 (1) AIR Bom. R (Cri.) 168**, where Hon`ble Division Bench was of the view that in cases where the accused were not residing in India, proclamation under Section 82 of the Code is liable to be set-aside. On the same point reliance was also placed on the judgment from a Co-ordinate Bench of this Court in **Mehar Singh & Anr. Vs. State of Punjab, 2010 (2) R.C.R. (Criminal) 167**.

6. Having considered the submissions made by learned counsel for the parties and appraisal of the record of this case, this Court is of the

considered view that the process was issued against the present petitioner for the first time on 28.10.2017 and summons were ordered to be issued for 6.2.2018. As per the petitioner, he was not in India at the relevant time and it is a case of non-compliance of mandatory provisions of Sections 62 to 65 and Section 82 of the Code.

7. Similar matter was before Hon`ble Apex Court in **Lavesh Vs. State (NCT of Delhi), 2012(4) R.C.R. (Criminal) 240**, wherein Hon`ble Supreme Court was dealing with identical matter where accused was not appearing and proclamation was effected in terms of Section 82 of the Code and it was observed that such a petitioner is not entitled to anticipatory bail. Similar view was also taken by the Co-ordinate Benches of this Court in **Nikil Garg Vs. MS Super Jewelers Pvt. Ltd., 2017 (1) DCR 135** and **Kuldip Singh Vs. State of Haryana, 2018(4) R.C.R. (Criminal) 761**. As such, the plea taken in this case for grant of anticipatory bail is not maintainable.

8. Since the petitioner has taken the plea that he was not in India at the relevant time when the summons were issued and that fact can be verified from the record only which is available with learned trial Judge and the said Court has already issued warrants and proclamation under Section 82 of the Code, the present petition is disposed of with the following directions :-

- i). in case, the petitioner surrenders before learned trial Judge within two weeks from today and move appropriate application for quashing of the said order and to release him on bail;
- ii). learned Magistrate shall decide the said application within a period of one week while taking into consideration all these facts.

The present petition stands disposed of in the above terms.

(SHEKHER DHAWAN)
JUDGE

December 11, 2018

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes