

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40162-2018 (O&M)

Date of decision: 17.05.2019

Madhu Wadhwa

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Mr. Karan Sharma, AAG, Haryana.

Mr. R.S. Bhatia, Advocate
for respondent No.2.

ANIL KSHETARPAL, J. (ORAL)

Prayer in this petition is to quash the FIR No.446 dated 21.08.2017, registered under Section 174-A of the Indian Penal Code, at Police Station Faridabad Kotwali, District Faridabad as also for quashing of order dated 25.01.2016 passed by Judicial Magistrate Ist Class, Faridabad.

A complaint under Section 138 of the Negotiable Instruments Act, 1881 was filed wherein the petitioner-firm i.e. M/s Jai Balaji Traders was impleaded through its Proprietor i.e. the petitioner. Notices were issued to respondent No.2 and it was reported that her address as given in the complaint, is not correct. Various opportunities were granted to the complainant to provide correct address. The order dated 13.07.2015 is extracted as under:-

“Notice issued against the accused No.2 received back with the

report of "Left the address". Complainant is directed to file the correct address of accused within a week and thereafter, fresh notice against the accused No.2 be issued for 25.8.2015 through regd. cover on filing of RC etc. It is hereby made clear that if either the correct address is not filed or dasti notice not taken, the present complainant shall be liable to be dismissed for want of prosecution."

It is not disputed that correct address was not furnished by the complainant as counsel made a statement that this is the last known address. Thereafter on 25.08.2015 when notice issued to the petitioner was not received back served or otherwise, the Court decided to issue non-bailable warrants. The order dated 25.08.2015 is extracted as under:-

"Notice issued to the accused No.2 not received back either served or unserved. Ld. counsel for complainant submitted that address of accused No.2 available on the file is the only address known to the complainant and further submitted that accused is well aware of the proceedings of this case and intentionally avoiding his presence before the Court and he requested that NBW issued against the accused. Heard. A perusal of file reveals that number of times notice were sent to accused No.2 but every time same were received back unserved. It appears that accused is well aware of the proceedings of this case and intentionally avoiding his presence before this Court. Hence, this Court is of the considered view that accused can not be summoned through ordinary process. Hence, non-bailable warrant against the accused No.2 be issued for 29.09.2015 through SHO concerned."

Even non-bailable warrants were received back unserved and the Court decided to start proceedings under Section 82(1) of the Criminal Procedure Code. The order dated 29.09.2015 is extracted as under:-

"Warrant of arrest issued against the accused No.2 received back unserved. On perusal of the case file, it appears that the

accused is well aware of the pendency of the present case and she is intentionally concealing herself with a view to avoid the process of the Court. Accordingly, let proclamation u/s 82(1) Cr.P.C. be issued against the accused No.2 for 20.11.2015. Serving constable is directed to appear in person on the date fixed.”

Thereafter, since pursuant to the proclamation carried out, the petitioner did not appear, therefore, she was declared proclaimed offender and FIR in question was registered.

It is apparent from the daily orders which have been extracted above that in spite of report of the process server that the petitioner has shifted from the address given in the complaint, still the Court rather than compelling the complainant to file correct address choose to resort to the procedure which was not required to be followed in the facts of the present case. A complainant who wants the criminal proceedings to be initiated is duty bound to provide correct address of the alleged accused. There was no evidence available with the Court to conclude that the petitioner is residing at the given address or is in knowledge of the proceedings. It is not disputed that accused No.1 and 2 are not related.

Keeping in view the aforesaid facts, the order passed by the learned trial Court initiating the proceedings under Section 82, Cr.P.C. and consequent order is set aside. Once the petitioner is not a proclaimed offender, therefore, the entire basis of FIR in question also ceases to exist and hence, liable to be quashed.

Learned counsel for the parties admit that the only complaint filed under Section 138 of the Negotiable Instruments Act, 1881 was dismissed for non-prosecution but no application for restoration has been filed till date and if the Court decides to restore the complaint, the petitioner

would be served on the address given in this petition i.e. House No.430, Sector 46, Faridabad. If the petitioner changes her address, she will be duty bound to intimate the concerned Court.

In view thereof, the petition is allowed.

17.05.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No