

In the High Court of Punjab and Haryana at Chandigarh

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CRM-M No. 21624 of 2021 (O&M)
Date of Decision: 28.10.2021

Surender Sharma

.....Petitioner

Versus

Atma Ram Bishnoi and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Suneel Sharma, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

The impugned petitioner has been put a notice of accusation by the learned trial Magistrate, for the offences constituted under Sections 138 and 142 of the Negotiable Instruments Act, 1881 read with Section 420 IPC. Since the learned trial Magistrate failed to secure the presence, before him, of the petitioner-accused, despiteailable warrants, non-ailable warrants being issued, respectively, on 08.5.2018, and, on 08.3.2019. Moreover, since the non-ailable warrants remained unserved upon the accused-petitioner. Therefore, the learned trial Magistrate through an order made on 19.9.2019, drew proceedings under sub Section (2) of Section 82 Cr.P.C.

In tandem with the afore statutory provisions, the learned trial Magistrate in the order (supra), made the hereinafter directions, to the

Executing Officer.

The Executing Officer concerned, though, has made a report carried at page No. 26 of the miscellaneous application, to the learned trial Magistrate, that upon his visiting the abode of the petitioner-accused, he found the premises locked, and, thereafter, in the vicinity of the abode of the accused, he spoke aloud about the subsequent appearance of the accused-respondent, before the learned Magistrate.

However, since at page 26 of the miscellaneous application, the Executing Officer reports, that when he visited the house of the accused, he found the premises locked. Therefore, his making a loud proclamation, in its vicinity, for an apposite intimation, to him, about the subsequent appearance of the accused before the learned trial Magistrate, would obviously be a completely deficit attempt, in making an apposite efficacious intimation to him, hence for the relevant purpose. Contrarily, it was wiser for the Executing Officer to read the proclamation notice, at a prominent place of his relevant abode or to get an order for publication in the newspaper concerned, with an intimation to all concerned, about the date of appearance of the accused before the learned trial Magistrate, besides it was also available, for the Executing Officer, to fix the Court notice on the conspicuous part of the courthouse, and, also to paste it, on the conspicuous part of the house of the petitioner-accused, if he would return to the premises concerned. Though, the afore compliances are meted by the Executing Officer concerned. However, if the petitioner-accused's premises at the relevant time, were found locked, even the endeavours (supra), inpurported compliance of statutory requirements, were completely deficit in ensuring the presence of the accused, before the learned trial Magistrate.

It was, rather, expedient for the Executing Officer, to make an intimation with respect to the afore fact, to the learned trial Magistrate or to make a re-report to him, with respect to an order, being pronounced, by him within the ambit of clause (2) of Sub Section (2) of Section 82 Cr.P.C., provisions thereof, are extracted hereinafter:-

“ x x x x x

(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.*

x x x x x”

In case, the afore order was made, the subsequent non-appearance of the accused before the learned trial Magistrate, would have been inexcusable, and, would tenably constrain him, to make an order of 11.10.2019, hence accepting the report of the Executing Officer. However, without the afore recourse being made, the learned trial Magistrate made an order of 11.10.2019, wherethrough he proceeded to draw further proceedings against him, through recourse, being made with the mandate of Section 83 Cr.P.C.

Furthermore, he made an order on 16.11.2019, where through he ordered for the consignment to records of the apposite case, rather, upto the accused-petitioner appearing in Court. Since, the learned Magistrate concerned, after non-execution of the non-bailable warrants upon the accused, could reissue them, and even if thereafter the accused avoided their execution, upon him, thereupon, the learned trial Magistrate concerned could make a valid order, declaring the accused as a proclaimed offender. However, since the afore imperative recourses, were not made by the learned Magistrate concerned, thereupon, the afore wants constrain this Court, to conclude that he has made the impugned order in a slipshod, and, also in a posthaste manner. Consequently, the impugned orders require interference.

Be that as it may, since the petitioner, has filed the instant petition, assailing the impugned orders concerned, and, also when the learned counsel for the petitioner, assures this Court that he shall, within a fortnight from today, surrender before the learned trial Magistrate concerned, therefore the impugned orders are interfered with, and, are set aside. The learned counsel for the petitioner shall ensure, that the latter ensures his surrender before the learned trial Magistrate on or before 16.11.2021. Till then, the police agencies may not take any coercive action against the accused. However, it is subject to the petitioner, forthwith furnishing personal and surety bonds, in the sum of Rs. 50,000/- each, to the satisfaction of the learned trial Magistrate. Subsequently, the learned trial Magistrate, shall proceed, in accordance with law, with the complaint concerned. The accused-petitioner shall regularly appear before him, unless affirmative orders are made on his application seeking his exemption from

personal appearance.

The petition stands disposed of.

(SURESHWAR THAKUR)
JUDGE

October 28, 2021
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes