

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

205)

CRM-M-22068-2021

Date of Decision: 04.08.2021

M/s Oswal Krishi Yantra and another

.....Petitioners

Versus

State of Punjab and another

...Respondents

CRM-M-22075-2021

M/s Oswal Krishi Yantra and another

.....Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Vishal Gupta, Advocate, for the petitioners.

Mr. Ramdeep Partap Singh, DAG, Punjab.

Mr. Hitesh Pandit, Advocate,
for the complainant/respondent no.2.

Amol Rattan Singh, J. (Oral)

Case heard by video conferencing.

The petitioners in these two petitions seek quashing of the impugned order dated 20.09.2018 (Annexure P-9) passed by learned Judicial Magistrate Ist Class, Jalandhar, and all subsequent proceedings arising therefrom.

On 02.07.2021, the following order had been passed by this court:-

“Case heard via video conferencing.

By this petition, the petitioners seek quashing of the impugned order dated 20.09.2018 (copy annexed as

Annexure P-9 with the petition), passed by the learned Judicial Magistrate First Class, Jalandhar, whereby the petitioners have been declared as proclaimed persons, without adopting the proper procedure of law (as alleged), in a criminal complaint bearing no. NACT/168/2018, dated 05.01.2018, titled as M/s Acme Steel Products Pvt. Ltd. vs. M/s Oswal Krishi Yantra and another, filed by respondent no. 2 herein, under the provisions of Section 138 of the Negotiable Instruments Act, 1881, as also all other subsequent proceedings arising therefrom.

Learned counsel for the petitioner first points to the report made by Head Constable Vinod Kumar from the "service staff" of the Police Commissioner, Jalandhar (copy Annexure P-5), to the effect that the bailable warrants issued to secure the presence of petitioner no. 2 before the trial court could not be effected due to non-availability of any person for such service out of the State (the petitioner being a resident of Agra Cantt, U.P.). He submits that therefore the alternate mode of service could not have been adopted by the trial court, of service upon him by publication, without first affixation of the notice issued being made at the address given in the memo of parties by the complainant.

Notice of motion.

On the asking of the court, Mr. Sauravh Khurana, D.A.G., Punjab, accepts notice on behalf of respondent no. 1 (State).

A copy of the petition be emailed to learned State counsel by learned counsel for the petitioner today itself.

Adjourned to 04.08.2021.

Respondent no. 2 be served by way of normal as well as dasti process by the next date of hearing.

(It is however made clear that service of notice by dasti process shall be effected while taking all precautions as are necessary during this period of the COVID-19 pandemic, including distancing and wearing of mask etc.)

In the meanwhile, till the next date of hearing only and specifically, petitioner no. 2 be not arrested, subject to him now surrendering before the trial court within a period of two weeks from today.

Upon him so doing, he would be admitted to interim bail to the satisfaction of that court, till the next date of hearing before this court.

It is made clear that if respondent no. 2 is not shown to be served of the notice issued by the next date of hearing, the interim order would be likely to be vacated."

Today, Mr. Hitesh Pandit, Advocate, appears for respondent no.2 and submits that as regards the address of petitioner no.2 the said respondent had supplied the address as was available with him and as regards the trial

court having issued orders for service by way of alternative means he cannot comment upon the procedure of the court.

Be that as it may, he does not deny that as per his instructions, petitioner no.2 has actually surrendered before the trial court and has furnished bail and surety bonds to the satisfaction of that court and has been admitted to bail in the context of both the complaints, in terms of the order of this court, dated July 02, 2021.

That being so, and obviously the complainant-respondent no.2 more interested with the trial continuing, it being a complaint filed under the provisions of Section 138 of Negotiable Instruments Act, 1881, this petition is disposed of with a direction that petitioner no.2 would continue to remain on bail during the course of the trial, provided he appears before the trial court on each and every date that he summoned (except on those dates that he is duly granted any exemption by that court).

Naturally, the trial court would endeavour to ensure that the trial is now concluded at the earliest.

Thus, these petitions are both allowed, with the impugned order set aside in view of the fact that nothing has been shown to this court even by counsel for the complainant that the correct address of petitioner no.2 was actually given at any point of time to the trial court and any notice was actually issued on that address.

Hence, with the report of the police official who was to execute the bailable warrants to secure the presence of petitioner no.2 (in each case), being to the effect that the warrant could not even be executed in view of the

ongoing pandemic, it would be pointless to prolong the proceedings and consequently delaying the trial unnecessarily.

A photocopy of this order be placed on the file of the connected case.

04.08.2021
dharamvir

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned : YES/NO

Whether Reportable : YES/NO