

CRM-M-28157-2021

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

CRM-M-28157-2021 (O & M)

Date of decision: 27.07.2021

Rajat Kalra and others

...Petitioners

Versus

Abhay Chawla

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mrs. Baljit Kaur Mann, Sr. Advocate with
Mr. Piyush Gupta, Advocate,
for petitioners No.1 to 3 and 5 to 8.

Mr. R.S.Cheema, Sr. Advocate with
Mr. Gurmohan Singh Bedi, Advocate and
Ms. Tarannum Cheema, Advocate,
for petitioner No.4.

Mr. Ashish Chopra, Senior Advocate with
Mr. Gagandeep Singh, Advocate for the respondent.

HARNARESH SINGH GILL, J. (ORAL)

Case is taken up for hearing through video conferencing.

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This is an application under Section 482 Cr.P.C. for the amendment of the head-note and prayer clause of the main petition.

It is mentioned in the application that due to inadvertence, the petitioners omitted to challenge the order dated 25.02.2021 (Annexure P-5) passed by the learned Judicial Magistrate Ist Class, Gurugram, whereby they had been summoned through proclamation under Sections 82/83 Cr.P.C.

In view of the grounds mentioned in the application, the present application is allowed.

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Allowed as prayed for. Annexures P-8 and P-9 are taken on record, subject to all just exceptions.

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Petitioners lay challenge to the orders dated 25.02.2021 (Annexure P-5) and dated 02.07.2021 (Annexure P-7) passed by the learned Judicial Magistrate Ist Class, Gurugram, whereby the petitioners have been summoned through proclamation under Sections 82/83 Cr.P.C. and subsequently declared proclaimed persons, respectively, in complaint case No.73140 dated 09.08.2019, CIS No.38792 of 2019 (Annexure P-1) titled 'Abhay Chawla Vs. M/s Raheja Developers Limited and Others' under Sections 138, 141, 142, 143-A of the Negotiable Instruments Act, 1881 (for brevity, 'N.I. Act') and Section 357 Cr.P.C.

Mr. R.S. Cheema, learned Senior Counsel, for petitioner No.4, vehemently argues that while passing the aforesaid impugned orders, the provisions of Section 82 Cr.P.C. have not been complied with, and the orders have been passed out of haste, which has resulted into the defeat of the lawful rights of the petitioners. It is further submitted that at no point of time, there was any intentional, deliberate or wilful conduct of the petitioners to evade the proceedings before the trial Court. While making a detailed narrative of the dates of event, learned senior counsel submits that even though the notices were not received back served or otherwise, the learned trial Magistrate had proceeded to issue bailable warrants for 05.11.2019 on the assumption of lapse of sufficient time, which is totally foreign to the legal procedure. It is further contended that the bald

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statement of the counsel for the complainant as regards the petitioners avoiding the service/bailable warrants, the learned trial Magistrate proceeded to issue non-bailable warrants for 13.12.2019. The hasty approach of the trial Magistrate is further apparent from the very fact that despite the appearance of the Company through its counsel, no effective steps were taken to ensure the service upon the petitioners and the trial Magistrate straight forwardly proceeded to invoke the provisions of Section 82 Cr.P.C. Moreover, the trial Magistrate, while passing the impugned orders and initiating the proceedings preceding the said orders, has clearly flouted the instructions/orders, issued/passed by this Hon'ble High Court, during the Covid-19 period.

Mrs. Baljeet Kaur Mann, learned Senior Counsel, for petitioners No.1 to 3 and 5 to 8, while reiterating the submissions made by Mr. R.S. Cheema, learned Senior Counsel, would submit that petitioners No.1 to 3 and 5 to 8 were not the signatory to the cheque(s) and that they had resigned much before the date of issuance of the cheque(s). She would, thus, argued that when the very liability of the petitioners represented by her does not arise, there was no occasion for the trial Magistrate to pass the impugned orders.

Notice of motion.

On the asking of this Court, Mr. Gagandeep Singh, Advocate, accepts notice on behalf of the respondent.

Mr. Ashish Chopra, learned Senior Counsel, for the respondent, while vehemently opposing the submissions made by both the learned Senior Counsel for the petitioners, submits that the petitioners have

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intentionally avoided their service and the trial Magistrate has rightly passed the impugned orders. However, he submits that contesting the aforesaid pleas of the petitioners before this Court would unnecessarily delay the trial proceedings and hence, he very fairly submits that the present petition may be disposed of with a specific direction to the petitioners to appear before the trial Court to face the proceedings with further directions to the trial Court to decide the case at the earliest.

I have heard the learned counsel for the parties.

In view of the very fair stand taken by the learned senior counsel for the respondent and without going into the legality of the submissions made by the learned senior counsel for the petitioners, the present petition is disposed of with a direction to the petitioners to appear before the trial Court on 15.09.2021 to face the proceedings. Upon their doing so, the trial Court will proceed with the matter in accordance with law and make all endeavours to decide the matter at the earliest.

As a consequence of the aforesaid directions, the impugned orders stand set aside.

27.07.2021

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(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No