

120

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

CRM-M-44798-2021

Date of decision : 27.10.2021

Yogita Kaushik

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Abhimanyu Singh, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of impugned order dated 06.09.2021 (Annexure P-3) passed by the Court of Additional Sessions Judge, Bhiwani in Criminal Appeal No.250 of 2017 titled Yogita Kaushik Vs. Pawan Kumar in Criminal Complaint No.73 of 2013 which was instituted on 07.07.2013 vide which the bail of the petitioner has been cancelled and the warrants of arrest have been issued against the present petitioner on account of his absence on 06.09.2021.

Learned counsel for the petitioner has submitted that in the present case, the petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881 vide judgment dated 25.04.2017 and sentenced to undergo simple imprisonment for a period of two years and

was also directed to give an amount of Rs.3,50,000/- i.e. equal to the cheque amount as compensation to the complainant vide order dated 27.04.2017. Against the said judgment of conviction and order on quantum of sentence, an appeal was filed before the Sessions Judge, Bhiwani, in which sentence of the petitioner was suspended and she had been regularly appearing before the Sessions Court from 09.08.2017 to 25.11.2019. It is further submitted that on 25.11.2019, the case was adjourned to 07.01.2020 but the file was taken up on 04.01.2020 as the concerned Presiding Officer had to proceed on joining time and the case was accordingly adjourned to 03.04.2020. Thereafter, in view of the COVID-19 pandemic, the case was being adjourned without any effective proceedings and the petitioner was informed by her counsel that as and when the petitioner was required to appear, she would be informed. It is only on 23.02.2021 and 06.09.2021 when the petitioner did not appear, as her counsel did not inform her that she was supposed to appear on the said dates and it is on account of this non-appearance that the impugned order had been passed.

Learned counsel for the petitioner has submitted that the petitioner would appear before the Appellate Court on or before the next date of hearing i.e. on 08.01.2022 and would keep appearing in the matter. It is further submitted that the petitioner is also ready to deposit an amount of Rs.70,000/- which is 20% of the cheque amount/compensation i.e. Rs.3,50,000/- within a period of 15 days from the date of receipt of the certified copy of the present order.

Notice of motion to respondent No.1 only.

On advance notice, Mr. Praveen Bhadu, AAG, Haryana,

appears and accepts notice on behalf of respondent No.1 and has opposed the present petition.

In this case, notice has not been issued to respondent No.2 in order to avoid the delay.

Keeping in view the factual circumstances of the case, moreso the fact that as per the zimni orders which have been produced on record by the counsel for the petitioner and are taken on record, the petitioner had been appearing almost on every date i.e. from 09.08.2017 to 25.11.2019 and on 25.11.2019, the case was adjourned to 07.01.2020, on which date, the matter was not taken up as the case was taken up on 04.01.2020 and was adjourned to 03.04.2020 and thereafter, in view of the COVID-19 pandemic, no effective proceedings had taken place and thus, non-appearance of the petitioner on the date when the impugned order was passed as well as on 23.02.2021, cannot be said to be mala fide. Moreover, the petitioner in order to show her bona fide, is also ready to deposit an amount of Rs.70,000/- which is 20% of the cheque amount i.e. Rs.3,50,000/-.

This Court after considering the entire record has formed an opinion that in view of the facts and circumstances and also in view of the fact that the petitioner is ready to deposit an amount of Rs.70,000/-, it would be in the best interest of justice to set aside the impugned order, so that the main appeal can be heard on merits.

Thus, the present petition is allowed and the impugned order dated 06.09.2021 (Annexure P-3) is set aside and the petitioner is directed to put in appearance before the Appellate Court on or before the next date of

hearing and he be released on bail on his furnishing fresh bail bonds and surety bonds to the satisfaction of the concerned Appellate Court/Additional Sessions Judge, and is also directed to further appear on each and every date unless the exemption from personal appearance has specifically been granted by the Sessions Court and also to not delay the matter further. The same would be subject to petitioner's depositing an amount of Rs.70,000/- with the Appellate Court within a period of 15 days from the date of passing of the present order failing which the present petition would be deemed to have been dismissed. The said amount would be disbursed as per the orders passed by the Appellate Court in accordance with law.

27.10.2021*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**