

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

**CRM-M No. 51196 of 2021 (O&M)
Date of Decision: 07.12.2021**

Mohit Gupta

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Nirmaljeet Singh Sidhu, Advocate for the petitioner.

Mr. C.L. Pawar, Sr. Deputy Advocate General, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. After institution of the complaint before the learned Magistrate concerned, under Section 138 of the Negotiable Instruments Act, 1881, against the petitioner herein, the learned Magistrate concerned, after scanning preliminary evidence, as became adduced before him, ordered for issuance of summons, upon the petitioner. The afore made summoning order was recorded, on 22.10.2020 (Annexure P-1). However, from the perusal of the records, as placed before this Court, it appears that though the afore summons became personally served, upon the petitioner, and, that the petitioner yet failed to make his personal appearance before the learned Magistrate. Therefore, the latter became constrained to issue Non-Bailable Warrants (NBWs), upon the petitioner, for ensuring, his making his personal, appearance before him. However, the NBWs could not be personally executed upon the accused, rather became given to his employee, who undertook to inform the accused about the date(s) mentioned in the warrants, for the recording of the personal appearance of the petitioner, before the Magistrate concerned. For personal non-appearance, on the relevant date, of the accused, before him, the learned Magistrate concerned,

made the impugned order, wherethrough proceedings both under Section 82, and, under Section 83 of the Cr.P.C., became drawn against the petitioner.

2. Though, the remedy available to the petitioner herein, for ensuring that his personal liberty is not interfered with, given his employee being intimated about the date carried in the NBWs, for the petitioner, hence recording his personal appearance before the Magistrate concerned, and, also assuming that the employee concerned, also made the relevant information to the petitioner, rather became comprised in a motion being made, before the learned Magistrate concerned, for the recalling of the NBWs, if issued, and, also constraining him to not issue the NBWs, if not issued. However, the afore remedy did not come to be availed by the petitioner, rather before the learned Magistrate concerned. Therefore, the learned Magistrate concerned, did, *prima facie*, make an objective satisfaction, that the petitioner herein was willfully avoiding, the making of personal service, upon him, and, also was deliberately avoiding his making his personal appearance, before him. Nonetheless, the learned Magistrate concerned, could draw a valid objective satisfaction, about factum (*supra*), only when the NBWs became personally served upon the petitioner, and, not through the untenable substituted mode, hence upon his employee. Since the afore substituted mode, has been adopted by the serving agency concerned, and, thereafter the learned Magistrate has made the impugned order, therefore, it suffers from a gross perversity, and, infirmity, and, is set aside and quashed.

3. However, for ensuring that the personal liberty of the petitioner is not interfered, and, also given the statement at the Bar by the

learned counsel for the petitioner, that the latter shall surrender himself before the learned Magistrate concerned, thereupon, the petitioner shall surrender before the learned Magistrate concerned, on 16.12.2021. It is also clarified that only in the interregnum since the order made today, and, his making his surrender before the learned Magistrate concerned, no coercive action shall be initiated against the petitioner. However, upon the petitioner making his personal appearance before the learned Magistrate concerned, he shall make a motion before the Court, for his being released on bail. It is also open for the learned Magistrate concerned to, thereafter, list the apposite complaint for adduction of evidence thereon(s).

4. Disposed of.

December 07, 2021

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**(SURESHWAR THAKUR)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>