

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(123)

CRM-M-50845-2021.
Date of Decision:-06.12.2021.

Rajesh Kumar

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sandeep Punchhi, Advocate for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (Oral)

This is a petition under Section 482 of Cr.P.C. for quashing of the impugned order dated 28.03.2016 passed by the Judicial Magistrate Ist Class, Hoshiarpur, declaring the petitioner as proclaimed person in complaint NACT No.2200 of 2013 (Annexure P/1) instituted on 15.11.2013 titled as **“The Hoshiarpur Primary Cooperative Agriculture Development Bank Vs. Rajesh Kumar”** filed by respondent No.2 under Section 138 of the Negotiable Instruments Act, 1881 (for short ‘the Act of 1881’).

Learned counsel for the petitioner has submitted that in the present case, the complaint under Section 138 of the Act of 1881 was filed by impleading the present petitioner (the accused therein) by mentioning his address as 48 Tagore Nagar, Hoshiarpur. It is argued that the said address is wrong and the petitioner has never been a resident of the said address. In fact, the correct address of the petitioner is H.No.WS 103/A

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Satran Basti Shekh, Jalandhar. It is further argued that the petitioner has never resided in Hoshiarpur. Learned counsel for the petitioner has also referred to the report dated 07.06.2014, which is reproduced hereinbelow:-

“Report of the Process server

Sir,

It is submitted that as per the address given on the someone the undersigned reached at house No.48 Tagore never and searched Rajesh Kumar respondent but could not find the house. Even after making a request could not find out. The house No. or nearby place or the Stree No. may kindly be provided so that service may be got effected. Nobody has agreed to witness the report. The report is submitted Ram chand 31/05/2014.

Incorrect address

Signed 07/06/2014”

It is submitted that a perusal of the above report would show that the Process Server could not find the house which was stated to be the residence of the petitioner in the said complaint. Learned counsel for the petitioner has also referred to all the zimini orders starting from 16.06.2014 up to 28.03.2016 to show that it was repeatedly observed by the Court that the address which had been given in the complaint under Section 138 of the Act of 1881 was an incomplete address and inspite of the opportunities granted, the respondent No.2-Bank herein, had not filed the correct address. Specific reference has been made to the zimini orders dated 16.06.2014, 15.07.2015, 27.08.2015 and 18.01.2016 and the other zimini orders also

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show that the correct address was not filed. Reference has also been made to the order dated 27.08.2015, wherein even theailable warrants issued were received back unexecuted with the report of “incomplete address”. The next date in the said case was 29.09.2015 and on the said date, after having recorded the fact that as per the report of Alhmad, correct address was not filed, the Court chose to issue non-ailable warrants for 10.11.2015. Again on 18.01.2016, the non-ailable warrants issued against the petitioner were received back unexecuted with report of “incomplete address” and Court ordered the proclamation proceedings under Section 82 of Cr.P.C. and thereafter, the petitioner was declared as proclaimed person on 28.03.2016. Learned counsel for the petitioner submits that it is apparent that the entire proceedings had taken place behind the back of the petitioner and the petitioner remained unaware about the same. It is further submitted that the petitioner is ready to appear before the trial Court within a period of 15 days from today and although the petitioner is not even remotely at fault, but however to compensate respondent No.2, the petitioner is ready to pay Rs.15,000/- to respondent No.2 without admitting his liability.

Notice of motion to respondent No.1 only at this stage.

On advance notice, Mr. Sarabjit S. Cheema, AAG, Punjab appears and accepts notice on behalf of the respondent No.1-State and has opposed the present petition.

This Court has heard the learned counsel for the parties and has gone through the record.

Notice is not being issued to respondent No.2-Bank, inasmuch

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as no prejudicial order is proposed to be passed by this Court against the said respondent and the present petition is being disposed of, in order to avoid the delay in the proceedings under Section 138 of the Act of 1881, which has already been delayed for a substantial period and also in order to avoid any expenses which were to be borne by respondent No.2 in order to pursue the present petition.

A perusal of the record would show that the address mentioned in the complaint is completely different from the address which has been mentioned in the petition. It is the argument of the learned counsel for the petitioner that the petitioner has never resided in Hoshiarpur. The fact that the petitioner was never duly served is apparent from the report dated 07.06.2014 and also from various zimini orders. In the report dated 07.06.2014, which has been reproduced hereinabove, the Process Server had submitted that the petitioner was not found at the house address provided by the complainant. It was also reported that the house number or nearby place or the street number was required to be provided for service to be effected. A perusal of the zimini orders starting from 16.06.2014 up to the date on which the petitioner was declared a proclaimed person, would show that repeated opportunities were given to the complainant to supply the correct address but the same was not done. The zimini orders dated 15.07.2015, 27.08.2015, 29.09.2015 and 18.01.2016 are reproduced hereinbelow:-

“Present: Complainant with counsel Sh. KS Thakur, Adv.

*Case received by transfer. It be registered. Notice
to accused could not be issued as correct address not filed. The*

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counsel for the complainant stated at bar that this was the only known address to them. So, now the accused be served through bailable warrants in the sum of Rs.5,000/- with one surety in the like amount for 27.08.2015.

*(Tanishth Goyal), PCS,
JMIC/Hoshiarpur
15.07.2015*

XXX---XXX---XXX

Present: Complainant with counsel Sh. KS. Thakur, Adv.

Bailable warrants issued against accused received back with the report of incomplete address. Let fresh bailable warrants of accused be again issued in the sum of Rs.5,000/- with one surety in the like amount for 29.09.2015 on filing of correct address.

*(Tanishth Goyal), PCS,
JMIC/Hoshiarpur
27.08.2015*

XXX---XXX---XXX

Present: Complainant with counsel Sh. KS Thakur, Adv.

As per report of ahlmad, correct address of accused not filed. This court is convinced that the accused cannot be produced through ordinary manner. Therefore, the accused be serve through non-bailable warrants for 10.11.2015.

*(Tanishth Goyal), PCS,
JMIC/Hoshiarpur*

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29.09.2015

~~XXX---XXX---XXX~~

Present: Complaint with counsel Sh. KS Thakur, Adv.

Non-bailable warrants issued against accused received back with the report of incomplete address. At this stage court is convinced that the accused cannot produced through ordinary service. Now, he be summoned through proclamation under Section 82 Cr.P.C. for 19.02.2016. Notice to Serving Constable be also issued for the date fixed.

*(Tanishth Goyal), PCS,
JMJC/Hoshiarpur
18.01.2016”*

A perusal of the above zimini orders would show that although on one hand, the Court was recording the fact that notice had not been issued as correct address had not been filed yet, the Court also chose to issue bailable warrants and even in the report of the bailable warrants, it was stated that the address was incomplete and further, the correct address was required to be filed, yet the Court chose to issue non-bailable warrants and subsequently, the Court chose to issue proclamation under Section 82 of Cr.P.C. and the petitioner was declared a proclaimed person.

In view of the above, the present petition is allowed and the impugned order dated 28.03.2016 is set aside, subject to the petitioner appearing before the trial Court within a period of 15 days from today and on such appearance, the petitioner would be released on bail after

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furnishing his bail bonds/surety bonds to the satisfaction of the trial Court and also subject to his depositing an amount of Rs.15,000/- before the trial Court, which would be released to respondent No.2-Bank. However, the said amount will be paid to respondent No.2 without prejudice to the rights of the petitioner and without admitting his liability in the case.

It is made clear that in case the petitioner does not surrender within a period of 15 days from today and deposits the above-said amount as has been directed hereinabove, then the present petition would be deemed to have been dismissed.

(VIKAS BAHL)
JUDGE

December 06, 2021.

sandeep

Whether speaking/reasoned:-

Yes/No

Whether Reportable:-

Yes/No