

119

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

CRM-M-50253-2021 (O&M)

Date of decision : 01.12.2021

Satbir

...Petitioner

Versus

Kotak Mahindra Bank Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Parveen Kumar, Advocate for the petitioner.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for issuance of any appropriate order or direction quashing the order dated 22.10.2021 (Annexure P-16) passed by the Judicial Magistrate Ist Class, Chandigarh in Complaint Case No.13995 dated 12.06.2018 under Section 138 of the Negotiable Instruments Act, 1881, (hereinafter to be referred as “the Act of 1881”).

Learned counsel for the petitioner has submitted that the respondent had filed a complaint under Section 138 of the Act of 1881 with respect to dishonour of cheque amounting to Rs.1,42,222/- and in

the said case, the petitioner was summoned vide order dated 15.03.2019 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Chandigarh. He has referred to various zimni orders dated 29.03.2019, 19.04.2019, 06.05.2019, 23.05.2019, 09.07.2019, 26.07.2019, 14.08.2019, 28.08.2019, 30.09.2019, 22.10.2019, 27.11.2019, 17.01.2020, in order to show that the petitioner had been appearing on each and every date before the trial Court. It is further argued that on account of COVID-19 pandemic, the hearing of the cases was restricted and only urgent cases were being taken up and the petitioner had gone to attend the Court proceeding but was not allowed to enter the Court premises on account of COVID-19 pandemic. It is further argued that wife of the petitioner was also not well as is apparent from the Certificate/Discharge Slip & Follow-up-Card, issued by the Hospital for the period starting from 21.10.2021 to 27.10.2021 and on account of the same, the petitioner could not appear on 22.10.2021 on which date, the bail of the petitioner was cancelled and the bail bonds and surety bonds furnished by him were cancelled and forfeited to the State and non-bailable warrants were issued against him for 02.12.2021.

Learned counsel for the petitioner has further contended that the petitioner would appear on each and every date before the trial Court except on the date when his appearance has been personally exempted by the Court and would not delay the trial and the non-appearance on one date before the trial Court, is genuine and bona fide.

Notice of motion, in this case, has not been issued as the

issuance of the same would result in delay of the proceedings which in fact would not be in the interest of the respondent-bank. Moreover, the order which is being passed by this Court is nowhere prejudicial to the interest of the respondent-bank and rather would serve the purpose of trial Court being able to proceed with the case under Section 138 of the Act of 1881.

This Court has heard the learned counsel for the petitioner and has perused the paper book.

A perusal of the record, moreso the zimni orders would show that after the summoning order had been passed on 15.03.2019, from 29.03.2019 upto 17.01.2020, the petitioner had appeared on each and every date. Thereafter, on account of COVID-19 pandemic, which fact is known to everybody, the Courts were in restricted mode and thus, non-appearance of the petitioner on 22.10.2021 and also keeping in view the wife of the petitioner being admitted to Hospital, cannot be said to be intentional or mala fide. The next date in the case is 02.12.2021 and the petitioner has approached the Court prior to the same and has also undertaken that the petitioner would appear on each and every date before the trial Court unless his appearance is personally exempted by the Court.

Keeping in view the aforesaid facts and circumstances, the present petition is allowed and order dated 22.10.2021 (Annexure P-16) is set aside subject to the condition that the petitioner would appear before the trial Court within a period of one week from today and would also deposit the costs of Rs.2,000/- with the Court which would be paid to

the complainant. The petitioner would also be bound by his undertaking that he would appear before the trial Court on each and every date unless his appearance is personally exempted by the Court.

It is, however, clarified that in case, the petitioner does not appear within one week from today before the trial Court and does not deposit the costs of Rs.2000/- then the present petition would be deemed to have been dismissed.

01.12.2021

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No