

117

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

CRM-M-3019-2022 (O&M)

Date of decision: 27.01.2022

JAGTAR SINGH @ JUGTAR SINGH

...Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Ms. Gurpreet Kaur, Advocate
for the petitioner.

Mr. Bhupender Beniwal, AAG, Punjab.

(Through Video Conferencing)

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner is facing notice of accusation for commission of an offence constituted under Section 138 of Negotiable Instruments Act. The complaint in pursuance whereof, he is facing notice of accusation, is pending before the Court of learned Judicial Magistrate Ist Class, Amritsar.
2. The petitioner as is evident, from a photocopy of vakalatnama executed by him vis-a-vis one Sandeep Gors, Advocate, and, which became executed on 18.07.2019, was represented by the above counsel, before the learned Judicial Magistrate concerned, on 01.11.2021. However, despite the fact that the petitioner was represented by his counsel, the learned Judicial Magistrate concerned, has on 01.11.2021 rather made the hereinafter extracted order.

“Despite issuance of notice against the accused, he has not appeared in the court. Accused again absent today. Perusal of file reveals that the case has been fixed for complainant evidence but accused did not turn up in the court nor any

exemption application is moved on his behalf. Accused is only for delaying the proceedings. Case called several times since morning. But accused did not turn up in the court today. No intimation has been received on behalf of the accused. So, his is bail cancelled and the bail bonds forfeited to the State. Let non-bailable warrant of accused be issued for 05.01.2022.”

3. A reading of the order does not disclose, that the counsel by the petitioner, was present before the learned Judicial Magistrate. However, it though discloses, that the accused was not present before the learned Judicial Magistrate concerned, on 01.11.2021. Even if so, since the petitioner had engaged a counsel to represent him, in the proceedings drawn against him. Therefore, it was the solemn duty of his counsel, to ensure his making hence representation on his behalf, before the learned Judicial Magistrate concerned, on 01.11.2021, when the relevant lis became listed for the recording of the complainants evidence, and, also obviously for the cross-examination of the complainants evidence, by the counsel engaged by the petitioner. Since the counsel for the petitioner, did not record, his appearance and, also when the accused was not present, hence the learned Judicial Magistrate concerned, proceeded to order for the cancellation of personal, and, surety bonds as became furnished by the petitioner, and, besides ordered for the issuance of non-bailable warrants vis-a-vis the accused, and, made them returnable for 05.01.2022.

4. A reading of the above extracted order, does not disclose, that on 01.11.2021 the complainants evidence was present or not. Therefore, if the complainants evidence is not disclosed in the above order, to be not present on 01.11.2021. Consequently, the learned Judicial Magistrate concerned, could not draw any valid conclusion whether merely for non appearance of the accused, and, of his counsel both were intending to delay the proceedings. If so, the

learned Judicial Magistrate concerned, was required to order for re-listing of the lis for the production, and, the recording of the testifications of the complainants witnesses. Contrarily, the order as stated above discloses, that the accused was not present on 01.11.2021, yet a reading of the order also makes a disclosure, that the notice for ensuring the personal appearance of the accused before the learned Judicial Magistrate concerned, rather was issued. However, there is no echoing in the order of 01.11.2021, that the above notice was ever validly served, or not hence upon accused. For want of the above narration in the impugned order, it cannot be said that whether the notice, as became ordered to be issued, upon the petitioner became validly served, upon him or did not become hence served upon him, and, nor it can be safely concluded, that the non appearance of the petitioner, on 01.11.2021, was either intentional, and, was an attempt to delay the proceedings in the apposite lis.

5. Therefore, the impugned order is ridden with the vice of breaching the principles of natural justice, and, also for its untenably interfering with the personal liberty of the petitioner. Consequently, the instant petition is allowed, and, the impugned order of 01.11.2021 is quashed, and, set aside. The non bailable warrants, if not issued, may not be issued, and, if issued, they be forthwith re-called.

6. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

27.01.2022

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Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No