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

CRM-M-8054-2020

Date of decision: 20.05.2022

RAJ KUMAR

...Petitioner

Versus

AMAR SINGH BENIWAL

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Sandeep Parkash Chahar, Advocate
for the petitioner.

Mr. Kushagra Beniwal, Advocate
for the respondent.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner is aggrieved qua a notice of accusation in respect of an offence constituted under Section 138 of Negotiable Instruments Act.

2. On closure of complainant's evidence, upon the petition complainant, and, after completion of proceedings drawn under Section 313 Cr.P.C., the accused-petitioner herein filed an application on 23.04.2019, (Annexure P-4), before the learned trial Judge concerned, for seeking an order from the learned trial Judge concerned, for the persons/officials named in Annexure P-4 rather being summoned, as, defence witnesses. The learned trial Judge concerned, as unfolded by Annexure P-3, made an affirmative order thereons, on 28.01.2019.

3. The learned trial Judge concerned, also ordered for the issuance of summons, upon, the witnesses named in Annexure P-4. A perusal of the order sheets made by the learned trial Judge, reveals that though after all the requisite processes being instituted/filed by the petitioner before the learned trial Judge

concerned, for thereafters the defence witnesses, as, cited in Annexure P-4, being summoned, hence the learned trial Judge concerned, ordering for the persons/officials named in Annexure P-4 being summoned for theirs stepping into the witness box, as defence witnesses. Moreover, a reading of the order sheets also reveals, that some amongst the persons/officials named in Annexure P-4, did after, valid service being made, upon them of the apposite summons, rather step into the witness box, as defence witnesses. However, one amongst them inasmuch as, MHC, Police Station Civil Lines, Bilaspur, Chhatisgarh, did not step into the witness box, as it appears, that the relevant processes, as were required to be filed, in the establishment of the learned trial Judge concerned, did not come to be purprtedly filed.

4. Be that as it may, on 31.01.2020, as a last opportunity, and, subject to a cost of Rs.500/- to be deposited by the petitioner in DSLA, the petitioner was permitted to summon the above through registered post.

5. Though, in pursuance to the above made directions, the cost of Rs.500/-, as became imposed, upon the petitioner-accused through an order of 31.01.2020 became deposited, but on 24.01.2020, the learned trial Judge concerned, despite in the opening of his order making an echoing, that the summons, as became ordered to be issued, and, also became ordered to be validly served, upon the MHC concerned, rather not becoming received back.

6. On 14.02.2020 when the complaint became listed for the stepping into the witness box of the defence witness concerned, the learned trial Judge concerned, without recording therein, the factum whether the summons, as became ordered to be issued, and, also were obviously required to be validly served, upon the witsnesse(s) concerned, and, also without awaiting for the report

of the serving agency concerned, qua completion or awaiting completion of service thereof, upon the witnesses concerned, rather proceeded to make a conclusion, that the defence witness is not present, and, thereafter made a further conclusion, that despite 19 effective opportunities being availed for the relevant purpose, rather thereupon, proceeded to deny to the petitioner-accused any further opportunity for adduction of defence evidence, and, also proceeded to order for the listing of the complaint, for arguments on 18.02.2020.

7. The order of 14.02.2020 is challenged before this Court.

8. Though repeated opportunities were granted for the relevant purpose, yet the petitioner had for ensuring the stepping into the witness box of the defence evidence, had in face of above, did prior thereto tender in the establishment of the learned trial Judge concerned, all the relevant processes including the diet money concerned, thereupon, the learned trial Judge concerned, was bound to issue the relevant processes, and, was also bound to ensure that the issued summons became evidently validly served upon the defence witnesses concerned. A reading of the order sheets, as made by the learned trial Judge concerned, though as above stated reveal, that all the relevant processes, for ensuring the stepping into the witness box of the MHC concerned, were taken by the petitioner, and, also as unfolded, by an order of 17.01.2020, qua summons being issued for becoming served, upon the MHC concerned, but there is no reference therein, qua any report of the serving agent depicting whether the issued summons became served or not become served, upon the concerned, and, nor whether service upon the MHC concerned, was completed. In other words, despite the learned Judge concerned, on 17.01.2020 making a communication therein, that the summons, as issued to the MHC concerned, did

not result in valid service being caused upon him, yet in the subsequently made orders, there is no reference about any report of the process server concerned, qua the latter making any valid personal service for the relevant purpose, upon the defence witness concerned, nor is there any reference whether the service, upon MHC concerned, was complete or not, or was awaiting completion. Since obviously the requisite processes were instituted for the relevant purposes by the petitioner. Therefore, unless there was evidence comprised in the report of the process server concerned, that either defence witness concerned, had refused to accept service, as became intended to be validly personally served, upon him or if the process server, in his report had made a communication, that the MHC concerned, has shifted his abode, and/or, had made a report, that the attempted service upon him, could not be completed for rather any other reason. Thereupon, too on the basis of the above communications, it was incumbent upon the learned trial Judge concerned, to draw appropriate orders hence asking for the petitioner to either furnish the correct address of the defence witness concerned, or to order for the institution of fresh processes for the relevant purpose, rather than ordering for the filing of RAD concerned, a mere supplement/alternate to the imperative, filing of process fee for thereafters summons being issued, for valid personal service being caused upon the concerned. Even there is no reference whether the RAD was filed or not, and, also whether the AD became returned by the postal authorities, to the court concerned, yet, the above inapt conclusions became drawn.

9. In the wake of want of any reference qua the above trite factum, it was grossly inapt for the learned trial Judge concerned, to conclude, that there was the completest failure on the part of the petitioner, to ensure the stepping

into the witness box of the defence witness concerned, nor it was legally apt for the learned trial Judge concerned, to conclude, that despite repeated opportunities being granted to the petitioner, to produce the defence evidence, his yet failing to do so, especially on the purported ground of his failing to institute, in its establishment rather the relevant processes, for thereafter the concerned, being served personally, for thereafter the witness concerned, proceeding to step into the witness box, as, a defence witness.

10. Though, the learned counsel appearing for the respondent contends, that there is no necessity for the stepping into the witness box of the defence witness concerned, as, the learned trial Judge concerned, has ordered, that the certified copy of the original is permissible to be adduced into evidence. Since only a presumption of truth is attached to the certified copy of the original, even if it maintained in the public records. Nonetheless, the above presumption is rebuttable, and, rebuttal thereto evidence would emerge only after the original thereof being produced by the defence witness concerned, who is an official working in the police department. The above may be imperative, as thereupon, only the fact whether for want of existences in the certified copy thereof, rather the signatures of the applicant, hence makes it admissible or inadmissible.

11. The impugned order (Annexure P-1) is interfered with, and, is quashed, and, set aside. As a last opportunity, subject to all the processes being deposited, within two weeks, in the establishment of the learned trial Judge concerned, the latter is directed to issue summons, for theirs being served personally through ordinary mode, by the serving agency, upon, the defence witness concerned.

12. It is clarified that if the ordinary processes of making valid service, upon the defence witness succeeds, and, yet the defence witness does not appear, thereupon it is open to the learned trial Judge concerned, to recourse the relevant processes, as embodied in Order 16 of the C.P.C.

20.05.2022

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(SURESHWAR THAKUR)
JUDGE

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No