

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

**CRM-M No. 12232 of 2022
Date of Decision: 23.03.2022**

Nilesh Patel

..... Petitioner

Versus

BMS Impex Private Limited and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Ish Puneet Singh, Advocate for the petitioner.

SURESHWAR THAKUR, J. (ORAL)

1. The prayer in the instant petition is restricted to the validity of the drawing of order of 16.03.2021 (Annexure P-6), as, made by the learned JMIC, Hisar.

2. Through the afore made order carried in Annexure P-6, the learned Magistrate concerned, who was seized of complaint, titled as “ M/s. BMS Impex Pvt. Ltd. Vs. M/s. C.K. Wood Art & others”, for want of appearance(s), before him, on the relevant date, either of the accused in person, or, by his validly engaged counsel, hence ordered for cancellation of personal and surety bonds, as, became furnished by the petitioner, and, also ordered for the issuance of non-bailable warrants qua the petitioner, and, made them returnable for 28.04.2021. The afore made order became challenged by the aggrieved petitioner through his casting a revision petition, bearing Criminal Revision No. 25 of 2021, before the learned Additional Sessions Judge, Hisar. The Revisional Court, through an order made on 26.11.2021 (Annexure P-9), declined relief to the petitioner, and, affirmed the order, as, became recorded by the learned JMIC concerned,

and, as, become embodied in Annexure P-6.

3. Consequently, the aggrieved petitioner is led to, through the instant petition, cast under Section 482 of the Cr.P.C., challenge the afore drawn concurrent verdicts, as, made by both the learned Courts below.

4. A reading of Annexure P-8 reveals, that the trial, against the petitioner alongwith other co-accused arises from a notice of accusation, being put to them, for an offence constituted under Section 138 of the Negotiable Instruments Act, and, that it progressing to the stage of production of defence evidence at the instance of the accused concerned. Moreover, it is also revealed by Annexure P-8, that neither any steps were taken by the counsel or by the accused concerned, for valid service being caused, upon by the defence witnesses or upon the authorized officer of the HDFC Bank concerned, for ensuring that the latter produces the requisitioned record.

5. Therefore, obviously, on 16.03.2021, hence the defence evidence was not present. In consequence, no efficacious proceedings became drawn by the learned trial Magistrate concerned, upon, the *lis* (supra), rather on date (supra). Moreover, since the accused had engaged a counsel to defend him, in the trial, arising from the complaint (supra), yet also the counsel engaged, did not record his personal appearance before the learned Magistrate concerned.

6. The omission (supra) on the part of the validly engaged counsel by the accused, for defending him in the *lis* concerned, appears to have resulted in the ill consequence, qua hence, the learned Magistrate concerned, failing to elicit from him any explanation with respect to the valid causes, rather precluding the petitioner to make his personal

appearance before him, on the relevant date. If so, it also appears that for want of interactions inter se the counsel engaged by the petitioner, with the latter, especially with respect to the date on which the accused was to record his personal appearance before the learned Magistrate concerned, rather the relevant omission occurred. Therefore, cumulatively it appears, that the effects of the afore omission, and, also the effect of the *lis*, being listed on the relevant date rather not for drawing of any efficacious proceedings (*supra*), rather inasmuch as, the defence witnesses being not available, for the recording of their respective depositions, before the learned Magistrate concerned, is that, rather the issuance of non-bailable warrants against the accused, and, also the learned Magistrate concerned, ordering for issuance of a notice under Section 446 of the Cr.P.C. against the accused, and, his surety, being concludable, to be made through non-application of mind to the afore factum, by the learned Magistrate concerned.

7. In view of the above, the present petition is allowed. The impugned orders (*supra*) are quashed and set aside. Non-bailable warrants, if not issued already, be not issued and if issued, be recalled forthwith. The petitioner is directed to appear before the learned trial Court concerned, and, as and when he is required to be making his personal appearance, before the learned trial Court concerned, unless validly exempted.

March 23, 2022
'*dk kamra*'

(SURESHWAR THAKUR)
JUDGE

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