

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM-M-18860-2022

Reserved on: 14.07.2022

Pronounced on: 18.07.2022

Pooja Luthra

...Petitioner(s)

Versus

Yogesh Yadav

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present:- Mr. Shreenath A. Khemka, Advocate
for the petitioner.

ANOOP CHITKARA, J.

Dishonour of cheque issued by the petitioner led to issuance of statutory notice and filing of a complaint under Section 138 of the Negotiable Instruments Act, 1881. The concerned Court took cognizance of the matter and issued notice to the accused-petitioner. Later on, vide order dated 16.3.2022, learned Judicial Magistrate Ist Class, Gurugram issued bailable warrants against the petitioner-accused because of her non-appearance.

Feeling aggrieved, the petitioner has come up before this Court with the following prayer clause:-

"PRAYER

It is therefore humbly prayed that this Hon'ble High Court may:

- A. Quash the Order dated 16.03.2022 passed by Ld. JMJC, Gurugram in NACT-24461 of 2020 (Annexure P-1).*
- B. Stay the Trial Court Proceedings.*
- C. Call for the entire Trial Court Records.*
- D. Grant any other Order that it may deem fit in the facts of this case."*

Thus, the limited prayer of the petitioner is to quash the order dated 16.3.2022, vide which the concerned Court has issuedailable warrants against the petitioner.

In the present case, the summons were sent to the petitioner, firstly, on the address which was mentioned in the legal notice and secondly, which was through her mother-in-law. The order dated 16.3.2022 further reveals that the summons sent to the address mentioned in the legal notice were received unserved, whereas the summons sent to the second address i.e. through her mother-in-law were duly served. In case the petitioner was not aware about the service, then she had no opportunity to approach this Court.

Learned counsel for the petitioner has argued that there was violation of Section 138 CrPC, because the legal notice was not sent to the address at which the petitioner ordinarily resided, which fact is apparent, because the notice was not served on said address.

It would be appropriate to reproduce the said order, which reads as under:-

“Notice issued to the accused received back with the report that the accused was not found at the address. The said report was duly attested from the Patiala House Court, New Delhi.

Another notice issued to the accused received back with the report of service through mother-in-law. The same is also duly attested from Patiala House Court, New Delhi,

Perusal of the file reveals that one of the notice which was received unserved, was address accused Pooja Luthra wife of Sh. Sanjay Luthra R/o EA-36, 3rd Floor, Inderpuri, IARISO, Central Delhi, New Delhi, whereas the other notice which has been received back served through mother-in-law, has been address to the accused Pooja Luthra wife of Sh. Sanjay Luthra R/o EA-136, 3rd Floor, Inderpuri, IARISO, Central Delhi, New Delhi.

In these circumstances, concerned Ahlmad is directed to submit explanation in writing to this court explaining the two notices issued on different address of the accused without any formal application for change of the address by the complainant. The same be submitted within 7 days from the date of this order.

Case called several times since morning. None has appeared on behalf of accused. Waited sufficiently. Let,ailable warrant against accused be issued for 29.04.2022.

A perusal of order dated 16.3.2022 clearly reveals that the notice issued on the first address of the petitioner was received unserved. It nowhere

states that the petitioner did not reside at said address or for what reasons notice could not be served. Thus, the prayer made by the petitioner is misconceived and misreading of order dated 16.3.2022. The only incriminating part which goes against the petitioner is issuance ofailable warrants. In criminal prosecution of summons cases, the first step the Magistrate takes is to issue summons and in case of non-service, he/she resorts to second step i.e. issuance ofailable warrants. Even whenailable warrants are not effected, the Magistrates proceeds to take third step i.e. issue non-ailable warrants. Thus, learned Judicial Magistrate Ist Class has acted in accordance with law and there is no error in the impugned order.

Accordingly, the present petition is dismissed.

(ANOOP CHITKARA)
JUDGE

July 18, 2022
AK

Whether speaking/reasoned:	Yes
Whether reportable:	No.