

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

**CRM-M No. 28126 of 2022
Date of Decision: 05.7.2022**

Rattan Singh @ Rattanjeet Singh

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Balraj Singh Dhull, Advocate
for the petitioner.

Mr. Pardeep Prakash Chahar, DAG, Haryana. \

SURESHWAR THAKUR, J. (ORAL)

1. The present petitioner is an accused in complaint bearing No. 455 of 2017 dated 10.5.2017, titled as 'Tirath Ram versus Rattan Singh'. The above complaint was constituted under Section 138/142 of the Negotiable Instruments Act, 1881.

2. The petitioner herein though, had caused his personal appearances before the learned Magistrate concerned, and, was also granted the facility of bail, and, whereafter he proceeded to furnish the requisite personal, and, surety bonds, which also became attested, and, accepted by the learned Magistrate concerned. However, when the petition complaint became listed on 16.11.2021, before the learned Magistrate concerned, the latter, for non-appearance of the accused, moreso, without his seeking any valid exemption from his personal appearance, and, nor any affirmative order being made thereons, rather proceeded to cancel the order granting bail to the petitioner, and, thereafter proceeded to order for the forfeiture of

his personal bonds to the State of Haryana. Moreover, the learned Magistrate concerned, also proceeded to issue non-bailable warrants against the accused, and, made them returnable on 6.1.2022, besides he also ordered for the issuance of a notice, upon the surety, and, made the notice returnable on 6.1.2022.

3. The petitioner becomes aggrieved from the above order, and, has cast a challenge thereto, through his instituting the instant petition before this Court.

4. Even if on 16.11.2021, the petition complaint became listed for an efficacious purpose, inasmuch as it became listed for the recording of the complainant's evidence, and, also when it was imperative for the petitioner for ensuring the furthering of the proceedings drawn by the learned Magistrate concerned, to cause his personal appearance before the learned Magistrate concerned, unless he became validly exempted, but he did not, as above stated, either cause his personal appearance nor was granted any valid exemption rather by the learned Magistrate concerned. However, it is not clear from a reading of the impugned order that as a matter of fact, the complainant's evidence was present on 16.11.2021, therefore, it cannot be conclusively stated that merely for the personal non-appearance of the accused, the learned trial Court became enjoined to discharge the complainant's evidence, and, nor it can be said that there was any unnecessary obstacle created by the accused, in the ensuring of further progresses, upon, the petition complaint.

5. Moreover, any want of the personal appearance of the petitioner rather arose, as revealed on a reading of the impugned order, from his address mentioned in the Court notice, being an incorrect description

thereof. Therefore, when the petitioner did not come to be validly served on his correct address, hence the learned trial Magistrate concerned, could not conclude that any valid service, became caused upon him, nor could he conclude, that there was any willful, and, deliberate omission on the part of the petitioner, to cause his personal appearance, before the learned Magistrate concerned. Contrarily, it became incumbent upon the learned Magistrate concerned, to after discovering the correct address of the petitioner, cause there his valid service. However, the learned Magistrate concerned, did not recourse, the above measure but proceeded to, and, that too without issuing any prior notice upon the complainant, hence at his correct address, rather cancel the order, granting bail to the petitioner, which obviously cannot be sustained, as it causes blatant breach to the solemn canon of *audi alteram partem*.

6. In consequence, the impugned order is unsound in law, and, deserves interference. Therefore, the impugned order is quashed, and, set aside. However, the petitioner herein is directed to cause his personal appearance, before the learned Magistrate concerned, on 6.7.2022.

7. It is clarified that since an interference has been made with the impugned order, the learned Magistrate concerned, shall not insist, upon the petitioner, upon, the latter appearing before him, to refurnish personal, and, surety bonds.

8. The petition stands disposed of.

July 05, 2022

Gurpreet

(SURESHWAR THAKUR)

JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>