

In the High Court of Punjab and Haryana at Chandigarh

CRM-M No. 54303 of 2021

Date of Decision: 14.2.2022

Rinku @ Brahamjeet

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. Abhimanyu Singh, Advocate
for the petitioner.

Mr. Pardeep Prakash Chahar, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

(Through video conferencing)

1. Through an order made on 17.11.2021, which becomes annexed with this petition, as Annexure P-10, the learned Additional Sessions Judge, Gurugram, after making a conclusion, that despite service being caused upon the petitioner, his not making his personal appearance, before him, nor ensuring his presence, through his validly engaged counsel, proceeded to cancel, and, forfeit, the personal, and, surety bonds of the accused, besides proceeded to order for drawing of proceedings, under Section 446 Cr.P.C., against the petitioner, and, his surety. Moreover, the learned Additional Sessions Judge concerned, also ordered for issuance of warrants of arrest against the accused.

2. The afore made recitals in the order, borne in Annexure P-10, appear to arise from a *prima facie* sheer non-application of mind, as, *prima facie* it suffers from a vice of falsity as arises from *per se* inter se contradictions inter se the above recitals, with the appearances recorded, in

the above order, on behalf of all the accused concerned, inasmuch as by his validly engaged counsel, one Mr. Rahul Chauhan, Advocate.

3. The further effect of the afore non-application of mind, and, also the effect of the afore *inter se* contradictions *inter se* the above referred recitals, with the appearances (supra), recorded in the order of 17.11.2021, as made by the learned Additional Sessions Judge concerned, is that the learned Additional Sessions Judge concerned, even if the accused were not appearing before her, on the relevant date, rather became enjoined her elicit an explanation from the validly engaged counsel, about the reason for the petitioner, not making his appearance, before her. The above course was completely abandoned, and, so apparently for no valid reason.

4. Be that as it may, if the afore elicitation was asked by the learned Additional Sessions Judge, from the learned counsel, engaged by the petitioner, it would not have resulted in the happenings of the afore visible *inter se* contradictions, as occurring *inter se* recitals (supra), as carried in Annexure P-10, with the order recording the appearances (supra) on behalf of the petitioner, on the relevant day. Moreover, it may have also precluded the learned Court concerned to proceed to cancel, and, forfeit the personal, and, surety bonds of the petitioner to the State of Haryana, which rather has resulted in the respective estates of the petitioner, and, the surety becoming entailed with, the ill consequence of their respective estates untenably becoming subjected to proceedings drawn under Section 446 Cr.P.C. Therefore, when the counsel engaged by the petitioner may hence have made a good explanation for the apposite non-appearance or could have even moved an application on behalf of the petitioner, for exemption from appearance of the petitioner, on the relevant date, before the learned

Additional Sessions Judge concerned. Therefore, the non recourse of the above mode has reiteratedly rather precluded emergence of a valid explanation for the apposite non appearance. Consequently, the above elicitation appears to become completely benumbed hence upon the drawing of the impugned order, obviously in a short shrift, and, mechanical manner. Moreover, the learned Additional and Sessions Judge, has also not recorded any finding in the impugned order, that the ill sequel to the non-appearance of the accused, before her, is that the trial, as had opened against the accused, becoming unnecessarily prolonged or becoming unnecessarily stalled. Therefore, want of recording of the above finding also renders the drawing of the impugned order to be stained with a vice of gross impropriety.

6. Reiteratedly, the learned Additional Sessions Judge concerned, however, has proceeded to in a most mechanical, and, perfunctory manner, and, also in a most arbitrary manner, rather make the impugned order. Consequently, the order impugned before this Court, is quashed, and set aside, qua the petitioner. However, the petitioner is directed to hereafter record, on all relevant dates, his personal appearances before the learned Additional Sessions Judge concerned, unless validly exempted on valid grounds.

7. The petition is disposed of.

(SURESHWAR THAKUR)
JUDGE

February 14, 2022
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes