IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-6413-2023
Date of Decision: February 07, 2023

Diipesh Lakshman Bhagtani

.....Petitioners

Versus

Jaswinder Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Deepak Aggarwal, Advocate for the petitioner.

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HARKESH MANUJA, J (ORAL)

By way of present petition under Section 482 Cr.P.C., a prayer has been made for quashing of order dated 01.09.2022 passed by the trial Court; whereby non-bailable warrants have been issued against the petitioner for not having appeared before the Court in pursuance to summoning order dated 11.10.2019 passed against him in proceedings under Section 138 of the Negotiable Instruments Act, 1881, for short 'the Act'.

The facts of the case are that on account of dishonor of cheque No.117731 dated 30.10.2018, a complaint under Section 138 of the Act came to be filed against the petitioner, at the instance of respondent; wherein petitioner was summoned vide order dated 11.10.2019, on account of non-appearance of the petitioner in pursuance to the aforementioned summoning order dated 01.10.2022 followed by initiation of process as contemplated under Section 82 Cr.P.C.

Impugning the aforesaid order dated 01.10.2022, learned counsel for the petitioner submits that from a perusal of zimini orders

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passed by the trial Court which have been appended as annexure P-3 with the present petition, it can be seen that the petitioner was never effectively served upon and thus, non-bailable warrants could not have been issued against him. Learned counsel further submits that the petitioner is ready and willing to submit to the jurisdiction of the trial Court, in pursuance to the summoning order passed against him.

I have heard learned counsel for the petitioner and gone through the paper-book.

A perusal of order dated 01.09.2022 passed by the Court below shows that despite there being a report on the bailable warrants issued to petitioner to the effect that he was out of station, the trial Court without recording any sufficient or justified reasons ordered for issuance of non-bailable warrants against him. In the absence of any satisfaction having been recorded by the trial Court as regards there being a deliberate attempt on the part of petitioner for avoiding his presence in the Court, issuance of non-bailable warrants against him was totally uncalled-for.

In view thereof, petition is allowed. Order dated 01.09.02022 passed by the trial Court is hereby set aside. The petitioner is directed to appear before the trial Court within a period of 15 days from today and shall submit his bail bonds/ surety bonds to its satisfaction. The aforesaid order shall, however, be subject to payment of costs of Rs.10000/- to be paid to the respondent before the trial Court.

Keeping in view the nature of proceedings, the present petition is being decided without issuing notice to the respondent, lest it may delay the proceedings before the trial Court.

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However, in case, the respondent finds any misstatement on the part of the petitioner, he would be at liberty to approach this Court by moving an appropriate application.

February 07, 2023 **[HARKESH MANUJA]**
sanjay **JUDGE**

Whether speaking/reasoned yes/no
Whether reportable? yes/no

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