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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-15024-2021 (O&M)****Date of decision: August 07, 2023**

M/s Odeon Builders Pvt. Ltd.and another

....Petitioners

versus

Smt. Babita Garg Proprietor of M/s Ajanta Traders

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr.Suman Jain, Advocate for petitioners.

Mr. A.K. Jindal, Advocate for respondent.

ARUN MONGA, J. (ORAL)

Present petition has been filed seeking quashing of an order dated 04.02.2020 (Annexure P-1), passed by learned Additional Chief Judicial Magistrate, Panchkula, in complaint case bearing NACT No.322/2016 dated 08.04.2015, under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'NI Act') filed by respondent/complainant, vide which fresh notice of accusation has been served upon petitioner no.1.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Respondent instituted a complaint under Section 138 of the NI Act against the petitioners. Petitioner No.2 caused his appearance before that Court at Panchkula on 18.04.2017 and notice of accusation was served upon him vide Annexure P-3. It is stated that neither learned trial Court noticed it nor was pointed out by the complainant/respondent that the petitioner no.1 had not caused its appearance and hence trial could not have proceeded. Since punishment of the period more than one year can be imposed, the case was taken up as a warrant case by trial Court.

2.2. Trial commenced and the complainant closed his evidence vide order dated 19.12.2018 (Annexure P-4). Statement of petitioner no.2 under section 313 Cr.P.C. was

recorded vide order dated 31.01.2019 (Annexure P-5) and the case was adjourned for defence evidence.

2.3. On 17.12.2019, it was brought to the notice of the Court that no one has appeared on behalf of petitioner No.1 i.e., company after the case was transferred to Panchkula from Delhi. Complainant was thus directed to ensure the presence of authorized representative of petitioner no.1 on the next date of hearing i.e., 21.01.2020.

2.4. Thereafter, the authorized representative of petitioner no.1 caused his appearance on 04.02.2020. He was served upon a notice of accusation, vide impugned order dated 04.02.2020 (Annexure P-1). Hence the instant petition.

3. Learned counsel for petitioners would contend that perusal of the above factual matrix would show that complainant/respondent has become negligent in pursuing her case before learned trial court and it was her duty to bring the present fact in the notice of learned trial court on 18.04.2017 itself i.e., the day when petitioner No.2 was served with the notice of accusation that authorized representative of petitioner no.1 has not been served with the notice of accusation. The respondent/complainant has been allowed to lead evidence which allegedly amounts to *de novo*. Trial was earlier at the stage of defence evidence and statement of petitioner No.2 under Section 313 Cr.P.C. has already been recorded.

4. On the other hand, learned counsel for respondent supports the impugned order and opposes the prayer made herein.

5. I have heard learned counsel for petitioner and perused the case file.

6. After appreciating the evidence on record, vide impugned order dated 04.02.2020 (Annexure P-1), learned Court below served fresh notice of accusation upon petitioner no.1 and respondent/complainant was allowed to lead evidence with respect to petitioner No.1-company.

7. Impugned order dated 04.02.2020 (Annexure P-1) is, *inter alia*, premised on the following reasoning:

"xxxxxxx

Pursuant to non-bailable warrants issued by this court Authorized Representative of accused no.1 Company i.e., Sachin Jain has

appeared. Perusal of file would reveal that on 18.04.2017 the charges were framed only against Rajesh Bansal in the capacity of Director of accused no.1 but the notice of accusation on the main accused i.e., accused no. 1 Company has not been served. Consequently, a fresh notice of accusation served upon accused no. 1 Company through its Authorized Representative Sachin Jain to which the Company did not plead guilty and claimed trial.

Upon fresh notice of accusation being served upon Company, Learned counsel for complainant has sought an adjournment on the pretext that he wants to lead certain evidence with respect to the company. Learned opposite counsel has also not objected to the same. On joint request, case stands adjourned to 26.02.2020 for evidence of complainant to be brought at own responsibility”.

8. Perusal of the aforesaid shows that the impugned order is based on cogent reasoning after appreciating the evidence on record in right perspective.

9. In the instant case, findings recorded by learned trial Court are based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality.

10. The learned Court below is proceeding with trial diligently. It rightly noted that, on April 18, 2017, charges were though framed against Rajesh Bansal, but the notice of accusation for the main accused, accused no. 1 Company, had not been served. This indicates a potential oversight or procedural error in serving the notice to the company, which could raise questions about the fairness of the proceedings. This corrective step ensures that the company is made aware of the charges it is facing, allowing it to participate in the legal process properly. Accused no. 1 Company did not plead guilty and instead chose to claim trial. This is a standard legal procedure, as the accused has the right to contest the charges and seek a fair trial to establish their innocence. Furthermore, the counsel representing the complainant himself requested an adjournment to lead certain evidence related to the accused no. 1 Company. This indicates that it was the complainant who needed more time to gather and prepare their evidence to support the case against the Company. The opposing counsel thus rightly did not object to the adjournment request made by the complainant's counsel. Accordingly, both are/were willing to cooperate with each other and the court below cannot be found fault with as it

is merely ensuring a fair presentation of evidence. Thus, no grounds for interference are made out.

- 11. Instant petition is hereby dismissed.
- 12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

August 07, 2023
'D'Vir/shalini

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No