

125 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-44236-2023
Date of decision : 12.12.2023

M/S VINOD AND SONS

....Petitioner

Versus

PIYUSH

....Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Ms. Nancy Vashistha, Advocate
for the petitioner.

Mr. Sarthak Gupta, Advocate (Amicus Curiae)

PANKAJ JAIN, J. (ORAL)

The present petition has been directed against the order dated 16th of August, 2023 (Annexure P-4) passed by JMIC, Yamuna Nagar whereby prayer made by the petitioner/complainant in proceedings under Section 138 of the Negotiable Instruments Act, 1881 seeking permission to serve the accused through WhatsApp stands declined.

2. Ld. Amicus has provided this Court with the compendium including provisions in law i.e. provided under the statute/rules, orders as well as various precedents. The Courts have resorted to alternate mode of service when it was found difficult to serve the party or when the Courts were satisfied that the summoned party was evading service. So far as evasion of the service is concerned, the Code itself provides sufficient

solution. Provision contained under Section 65 takes care. The same reads as under :

“65. Procedure when service cannot be effected as before provided.—If service cannot by the exercise of due diligence be effected as provided in section 62, section 63 or section 64, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper.”

3. However in the present case there is a report made by the process server that the summons issued to accused remained unserved as he has gone out of country. The same is reflected in the order dated 04.11.2022 placed on record as Annexure P-2.

4. Though on merits no fault can be found with the order passed by the JMIC declining the prayer to serve the accused through WhatsApp, however, in the considered opinion of this Court the Trial Court ought not have closed the doors completely for the alternate mode. E-mail could be the one. Courts need to be more pragmatic as in trials under Section 138 of N.I. Act service of accused is pivot to the effective adjudication. Digital address is the new norm. In case the petitioner is able to provide correct e-mail address of the accused, the Court should allow the accused to be served through e-mail. Reliance can be placed upon the observations made by the Supreme Court in the case of **Indian Bank**

Association vs. Union of India, (2014) 5 SCC 590 wherein the Apex Court issued number of directions to be emulated by the Courts. Relevant portion of the judgment reads as under :

“DIRECTIONS:

- (1) Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.
- (2) MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. Court, in appropriate cases, may take the assistance of the police or the nearby Court to serve notice to the accused. For notice of appearance, a short date be fixed. If the summons is received back un-served, immediate follow up action be taken.
- (3) Court may indicate in the summon that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, Court may pass appropriate orders at the earliest.
- (4) Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for re- calling a witness for cross-examination.
- (5) The Court concerned must ensure that examination-in-chief, crossexamination and re-examination of the complainant must be conducted within three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in Court. Witnesses to the complaint and accused must be available for cross-examination as and

when there is direction to this effect by the Court.”
(emphasis supplied)

5. In view of above, the petitioner is granted liberty to move an appropriate application before the Trial Court providing e-mail ID of the accused. In case, such application is moved, this Court is quite sanguine that the Trial Court shall comply with the directions issued by the Supreme Court in the case of **Indian Bank Association vs. Union of India, (2014) 5 SCC 590** *ibid* and act accordingly.
6. The petition stands disposed off in above terms.

December 12, 2023		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No