

CRM-M-23678-2024

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Decided on: 10.05.2024

Raj Kumar Nagar ...Petitioner

Versus

Jagmohan Singh and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. S.K. Bishnoi, Advocate for the petitioner.

Mr. Rajat Gautam, Addl. AG, Haryana.

ANOOP CHITKARA, J.

Criminal Complaint	No. NACT-417-2019 under Section 138 of the Negotiable Instruments Act, District Sirsa CNR No.HRS1030015282019
Sessions Case No.	CIS No.-CRR-16-2024 CNR No.HRS100-001550-2024 Decided on 03.05.2024

1. Aggrieved by the closure of cross-examination and subsequent dismissal of the criminal revision petition vide order dated 03.05.2024 passed by the Additional Sessions Judge, Sirsa, accused had come up before this court by filing the present petition under Section 482 CrPC.
2. I have heard counsel for the petitioner and gone through the petition and Annexures thereof and its analysis would lead to the following outcome.
3. On 18.04.2019, Chief Judicial Magistrate, Sirsa, had summoned the petitioner-accused to face trial under Section 138 NIA, passed in a complaint on the allegations of dishonor of cheque amounting to Rs.1,68,000/-. On 11.09.2019, the concerned CJM, observed that accused could not be served and as such summoned accused through bailable warrants, returned for 30.01.2020. Thereafter matter was taken up on 29.01.2020 and the following order was passed:-

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“File taken up today as undersigned is availing compensatory leave on 30.01.2020. As such case is adjourned to 06.06.2020 for the purpose already fixed. All concerned be informed accordingly.”

4. Thereafter matter was taken up on 05.06.2020 and due to being quarantine of concerned CJM, again adjourned for 05.02.2021. After that on 25.02.2021, the matter was taken by the JMIC, Sirsa, who issued bailable warrants, returnable for 24.03.2021, upon filing of the correct address. The matter was taken up one day prior to the fixed date i.e. 23.03.2021 due to casual leave of the concerned Magistrate on 24.03.2021 and matter was adjourned to 11.05.2021, on which date, due to spread of Covid, the matter kept on adjourning. However on 12.01.2022, the concerned JMIC, Sirsa recorded the following order:-

“As per office report, bailable warrant issued against the accused not received back. On the perusal of the record of the case, it is reflected before this Court that the present case is pending at the stage of bailable warrants against the accused since 11.09.2019. The service of aforesaid bailable warrants has not been effected till date. On this, this court is of the considered view that accused is intentionally avoiding the service of process upon him. Accordingly let the accused person be served through non-bailable warrants for 23.02.2022.”

5. Perusal of the above said order reveals that the petitioner-accused has not been served and it could not have been presumed that he was intentionally avoiding the process and on the face of it, it was wrong to issue non-bailable warrants against him. On 23.02.2022, non-bailable warrants were received un-executed and subsequently proceedings for proclamation were initiated against him, returnable for 04.04.2022. On 04.04.2022, the petitioner surrendered before the concerned Court and was released on bail. Thus, the time taken for petitioner's service on 04.04.2022, cannot be attributed to the petitioner-accused and it was a partial delay because of the absence of the Court or because of the Covid pandemic. However that is not the issue in dispute but this Court has clarified this aspect to understand that criminal complaint of 2019 was not pending till 04.04.2022 because of delay tactics of the petitioner-accused but because of his non-service, either because of covid pandemic or the casual absence of the concerned Magistrate on the dates when the matter was listed. On 05.05.2022, the Court issued notice of accusation and it was put to the accused and he did not plead guilty and

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claimed trial. On that very date, the accused filed an application under Section 145(2) of NIA for allowing him to cross-examine the complainant and consequently the matter was adjourned for 05.07.2022 for cross-examination of the complainant.

6. On 05.07.2022, both , complainant and accused were present along with their counsel, however complainant's counsel prayed for time for cross-examination of the complainant and Court passed the order:-

"Cross examination of complainant not conducted. Learned counsel for the complainant prayed time for cross-examination of complainant. Prayer considered and allowed. Let, the matter be listed for cross-examination of complainant for 05.08.2022."

7. Thus, the complainant could not be cross-examined because of the fault of accused but it was the complainant who had sought time. After that the matter was adjourned for 05.08.2022, on which date, the application for exemption from personal appearance of the accused was filed and because of which, complainant's cross-examination could not be conducted. The Court granted exemption and adjourned the matter for 09.08.2022 and again on 09.08.2022, cross-examination of the complainant was not conducted although accused as well as complainants were present along with their counsel. The matter was adjourned for 14.10.2022 on the request made by counsel appearing for the accused. After that the matter was listed on 14.10.2022 when counsel for the accused took time to cross-examine complainant and the Court extended the time till 16.12.2022. When the matter was listed on 16.12.2022, counsel for the accused again took time and on his request, the matter was adjourned for 28.02.2023. The matter could not be taken up on 28.02.2023 because the concerned Court was on leave and the matter was adjourned to 27.04.2023. When the matter was listed on 27.04.2023, counsel for the accused again took time for cross-examination of the complainant and time was granted and the matter was adjourned for 19.05.2023. When the matter was listed on 19.05.2023, the accused moved application for his personal appearance which was allowed by the Court and at that time, counsel for the accused also took time to cross-examine the complainant and the matter was adjourned for 21.08.2023, on which date the accused counsel did not appear and one proxy counsel appeared on his behalf that time and the matter was adjourned for 27.10.2023. On 27.10.2023, counsel for the accused again took time to cross-examine the complainant

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and the Court adjourned the matter for 04.12.2023. On 04.12.2023 counsel for the accused did not appear and one proxy counsel appeared on his behalf and on his request the matter was adjourned for 29.01.2024 and the Court gave last opportunity to cross-examine. On 29.01.2024, when the matter was listed for cross-examination, being last opportunity accused counsel again prayed for time however the concerned Judicial Magistrate dismissed the prayer and passed the following order:-

“Today the matter was listed for cross-examination of complainant being last opportunity. Learned counsel for accused further prayed time for cross-examination of complainant. Perusal of the record of the case shows that notice of accusation was put on 5.5.2022 and after considering the application under Section 145(2) N.I. Act, the matter was listed for cross-examination of complainant for 5.7.2022. On 5.7.2022, matter was again adjourned for cross- examination of the complainant for 5.8.2022. On 5.8.2022, on the request of learned defence counsel, case was again adjourned for cross- examination of complainant for 9.8.2022. On 9.8.2022, on the request of learned defence counsel, case was again adjourned for cross- examination of complainant for 14.10.2022. On 14.10.2022, on the request of learned defence counsel, case was again adjourned for cross- examination of complainant for 16.12.2022. On 16.12.2022, on the request of learned proxy counsel for accused, case was again adjourned for cross-examination of complainant for 28.2.2023 and thereafter on 27.4.2023. On 27.4.2023, on the request of learned counsel for accused, case was again adjourned for cross-examination of complainant for 19.5.2023. On 19.5.2023, on the request of learned counsel for accused, case was again adjourned for cross-examination of complainant for 21.8.2023. On 21.8.2023, on the request of learned proxy counsel for accused, case was again adjourned for cross- examination of complainant for 27.10.2023. On 27.10.2023, on the request of learned counsel for accused, case was again adjourned for cross-examination of complainant for 4.12.2023. On 4.12.2023, on the request of learned proxy counsel for accused, case was again adjourned for today i.e. 29.1.2024. Today also, learned counsel for accused is praying time for cross-examination of the complainant, that too without providing any sufficient cause for such adjournment.

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On this, this court is of considered view that sufficient opportunities have already been granted to the accused for cross- examination of the complainant but accused in order to delay the proceedings is seeking adjournment again and again. Accordingly, this court does not deem it fit to provide further opportunity to the accused for cross-examination of the complainant. Accordingly, the opportunity for cross-examination of the complainant stands closed. Let, the matter be listed for defence evidence, if any and arguments for 16.2.2024.”

10. Aggrieved by the above said order dated 29.01.2024 passed by the JMJC, Sirsa,, the petitioner has come up before this Court.

11. Perusal of the order reveals that the petitioner accused sought a large number of adjournments wasting precious time of the Court, which was spent on writing orders and sometimes the accused sought adjournments and on a couple of time his counsel did not appear. All this, is with a view to delay the trial which had already been delayed initially because of the Covid Pandemic and due to lapses for which the accused could not be blamed. Even a perusal of the petition fails to point out any illegality in the order passed by the learned Additional Sessions Judge and rather it is extremely legal and no cause for interference is made out and it is not a case for worth issuing notice.

Petition is dismissed with the observations made above. Pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

10.05.2024

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Whether speaking/reasoned:

Yes

Whether reportable:

No.