

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-29473-2024 (O&M)

Date of decision : 05.06.2024

M/S PINE COMPUTERS WORLD THROUGH ITS PROPRIETOR
ASHISH SINDWANI AND ANOTHER

...Petitioners

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sunil Kumar Dhanda, Advocate
for the petitioners.

HARSH BUNGER, J. [ORAL]

Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure, is *inter alia*, for quashing of the order dated 28.11.2023 (Annexure P-3) passed by the learned Sessions Judge, Karnal, in Criminal Appeal No.80-2022 titled as “*M/s Pine Computers World and another vs Value One Retail*” whereby the petitioner has been declared as ‘proclaimed person’.

2. Briefly, respondent No.2 (Value One Retail Pvt. Ltd.) instituted a complaint under Sections 138/142 of the Negotiable Instruments Act, 1881 (for short ‘the N.I. Act’) against the present petitioners, which was allowed by the Court of Judicial Magistrate Ist Class, Karnal, vide its judgment dated 07.03.2022 (Annexure P-1) and the petitioners were convicted under Section 138 of the N.I. Act.

2.1 The afore-said judgment dated 07.03.2022 (Annexure P-1) came to be challenged by the petitioners by way of an appeal (*Criminal Appeal No.80-2022*) before the learned Sessions Judge, Karnal.

2.2 During the pendency of the afore-said appeal filed by the petitioners, the petitioner No.2 herein (Ashish Sindwani) absented from the proceedings and was subsequently declared as a proclaimed person vide order dated 28.11.2023 (Annexure P-3).

2.3 In the backdrop of the afore-mentioned circumstances, the petitioners have filed the instant petition through his 'Special Power of Attorney-Sh. Akshim Khurana.'

3. Learned counsel for the petitioners submits that the impugned order dated 28.11.2023 (Annexure P-3) is liable to be set aside as the petitioners are not residing at the address given in the appeal since 22.01.2023 and the warrants/proclamation issued against the petitioners were never served as petitioner No.2 had to visit foreign country for some work. It is submitted that the petitioners were totally unaware of the proclamation order(s), therefore, they could not appear before the Appellate Court. It is further submitted that since the petitioners are not residing at the given address, therefore, there was no occasion to evade the process of law intentionally as they were never served in accordance with law. Reliance is sought to be placed upon an order passed by the Coordinate Bench of this Court in **CRM-M-6246-2017** and also the judgment in the case of **"M.S.R. Gundappa vs State of Karnataka, 1977 CrLJ NOC 187"**.

4. I have heard learned counsel for the petitioner and perused the paper book with his able assistance.

5. In the instant case, admittedly, the respondent No.2 (Value One Retail Pvt. Ltd.) filed a complaint under Sections 138/142 of the N.I. Act, against the petitioners herein on the plea that the petitioner No.2 (Ashish Sindwani) was running his firm under the name and style "M/s Pine Computers World" (petitioner No.1, herein) and was purchasing

mobile phones from the complainant. It was averred by the complainant (respondent No.2) that an amount of Rs.28,47,722.66/- was outstanding against the petitioners for which petitioner No.2 issued a Cheque No.000156 dated 25.07.2017 of Rs.28,47,722/- drawn on 'UCO Bank' Gole Market, Nilokheri (Karnal). Apparently, the petitioners were held guilty under Section 138 of the N.I. Act vide judgment dated 07.03.2022, as noticed above. Thereafter, the petitioners filed a Criminal Appeal No.80-2022, challenging the afore-said judgment dated 07.03.2022.

5.1 During the pendency of ***Criminal Appeal No.80-2022***, the petitioner No.2 absented from the proceedings before the Additional Sessions Judge, Karnal and on 20.01.2023, the bail/surety bonds of the petitioners were cancelled and forfeited to the State. The relevant extract of order dated 20.01.2023 reads as under :-

“An application exempting personal appearance of appellant Ashish Sindwani has been moved on the ground that he had gone to Jalandhar for surgery of nose. On notice of the said application to the counsel for respondent, he has opposed the request for exemption on the ground that on previous date also i.e. 30.08.2022, the appellant was not present and exemption application was moved which was allowed. As per ld. counsel for respondent, even 20% of cheque amount has not been deposited by him despite last opportunity. Also no treatment record or medical certificate of appellant has been attached with the application. Heard. Admittedly, on the previous dates in view of the exemption application moved by the appellant, the personal appearance of appellant had been exempted. Today, last opportunity was granted to desposit 20% of the cheque amount but again an exemption application has been moved on medical ground but no medical certificate has

been attached with it. Keeping all the above facts in view, it seems that appellant wants to delay the proceedings of the case and no ground is made out to exempt presence of appellant. Hence, applicant in hand is rejected. Keeping in view the absence of appellant, his bail/surety bonds are cancelled and forfeited to the State. Let, he be summoned through warrants of arrest. Notice to his surety and identifier be issued for 18.05.2023.”

5.2 Subsequently, warrants of arrest issued against petitioner No.2 were received back with a report that he had gone to England (U.K.). It is noticeable that the father of petitioner No.2 namely, Sh. Deepak Kumar, had stood as surety for the petitioners and upon issuance of notice under Section 446 of the Cr.P.C., Sh. Deepak Kumar, pleaded guilty and did not claim trial, accordingly, an amount of Rs.40,000/- was imposed as penalty. Since, the presence of the petitioners could not be secured, accordingly, proclamation was issued against petitioner No.2 and vide order dated 28.11.2023, the petitioner No.2 was declared as a proclaimed person and a further directions was issued to the SHO concerned for the registration of case under Section 174-A of the IPC.

6. From the afore-mentioned facts and circumstances, it is evident that the bail/surety bonds of petitioner No.2 were cancelled and forfeited to the State on 20.01.2023. It is the plea of the petitioners that they are not residing at the address mentioned in the appeal (Criminal Appeal No.80-2022) since 22.01.2023; therefore, the warrants/proclamation issued against the petitioners were never served upon them and therefore, they could not appear before the Appellate Court.

7. I have considered the afore-said submission on behalf of the petitioners, however, I do not find any merit in the same. It is not the case

of the petitioners that they were not aware of the proceedings pending before the Court of Sessions Judge, Karnal. Rather, the petitioners already stood convicted for offence under Section 138 of the N.I. Act and it is the petitioners' own appeal, which was pending before the Sessions Judge, Karnal. A perusal of the order dated 04.05.2022 (Annexure P-4) would show that the petitioners had not complied with the directions issued by the Appellate Court to deposit 20% of the cheque amount. Concededly, during the pendency of the appeal filed by the petitioners before the Sessions Judge, Karnal, petitioner No.2 went abroad (U.K.) and absented himself from the proceedings before the Appellate Court below. Consequently, the bail/surety bonds of petitioner No.2 were cancelled and forfeited to the State on 20.01.2023. Even the father of petitioner No.2 namely, Sh. Deepak Kumar, who stood as surety for petitioner No.2, did not contest the proceedings under Section 446 of the Cr.P.C. and penalty of Rs.40,000/- was imposed upon him. Even from a perusal of this petition, it is not forthcoming as to when, how and from whom, the petitioner learnt about the orders impugned in the present petition. Therefore, it does not lie in the mouth of the petitioners to contend that they were not aware of the proceedings before the Court of Sessions Judge, Karnal.

7.1 The reliance sought to be placed by the learned counsel for the petitioners upon an order passed in **CRM-M-6246-2017** and also the judgment in the case of "**M.S.R. Gundappa** (*supra*), is misplaced as the same are distinguishable on facts. In the said cases, the accused persons were residing abroad even prior to the date of initiation of criminal proceedings against them, which is not the position in the present case.

7.2 Learned counsel for the petitioners is unable to show that petitioner No.2 went abroad (U.K.) after seeking permission from the

concerned Court nor he has stated as to when the petitioner No.2 intends to return to India to face the proceedings in the above-mentioned case. It is also not forthcoming if the petitioners had ever intimated the concerned Court as regards their change of address.

8. In view of the afore-mentioned facts and circumstances, it is found that the conduct of petitioner No.2 is not above board. The petitioner No.2 has not disclosed his address where, he is presently residing in England (U.K.) and the present petition has been filed through his 'Special Power of Attorney'. The instant petition is more in the nature of luxury litigation at the instance of petitioner No.2, who himself is residing abroad. Even his own father, who had stood surety for him, has not disclosed the details of petitioner No.2 nor he contested the proceedings under Section 446 of the Cr.P.C and has quietly accepted the penalty of Rs.40,000/- imposed upon him. It is evident that petitioners intentionally want to delay the proceedings and hence, they cannot be permitted to take benefits of their own wrongs, moreso when no intention on the part of petitioner No.2 to return to India and face the proceedings in the afore-mentioned case, is forthcoming.

9. No other argument was raised.

10. Resultantly, the instant petition fails and the same is accordingly dismissed.

June 05, 2024
gurpreet

(HARSH BUNGER)
JUDGE

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