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

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**CRM-M-34675-2025 (O&M)
Date of decision: 31.10.2025**

HC Sandeep @ Sandeep Rathor**...Petitioner****Versus****State of Haryana****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Prashant Sethi, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*), is for quashing of Complaint Case No. COMI/144/2023 dated 20.09.2023 (Annexure P-1) and the order dated 22.11.2024, passed by the Court of learned Chief Judicial Magistrate, Bhiwani in the aforesaid complaint, thereby summoning the petitioner as an accused for commission of offence punishable under Section 174 of IPC.

2. Brief facts of the case relevant for disposal of this petition are that in a case arising out of FIR No. 69 dated 14.03.2016, registered under Sections 323, 452, 506, 325 and 34 of IPC at Police Station Tosham, titled as ***State vs. Ravi Kant and others***, the petitioner was cited as a witness. Summons were issued on 04.08.2023 by the Sub Divisional Judicial Magistrate, Tosham, thereby calling upon the petitioner to appear and record his statement as a witness on 20.09.2023. On 20.09.2023, the petitioner did

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not appear as a witness before the concerned Court despite the fact that he had been duly served. Learned Sub Divisional Judicial Magistrate then passed the order dated 20.09.2023 (Annexure P-5), thereby initiating proceedings under Section 174 of IPC against him. On receipt of the said order, the learned Chief Judicial Magistrate passed impugned order dated 22.11.2024, thereby summoning the petitioner under Section 174 of IPC.

3. It is argued by learned counsel for the petitioner that he has been wrongly summoned in the aforementioned complaint on account of his non-appearance in response to summons issued in compliance with order dated 04.08.2023. In fact, he did not receive summons issued for that day as he had been transferred to some other police station. He had received summons for the next date of hearing i.e. for 20.09.2023 and had appeared before the learned trial Court and duly recorded his statement. His absence on 04.08.2023 was not intentional but was due to the reasons as mentioned above. The learned trial Court, while passing the order summoning the petitioner, did not apply its judicious mind and did not take into consideration the aforementioned facts. It is, therefore, urged that the impugned complaint as well as the impugned order are liable to be quashed.

4. Reply has been filed. Learned State counsel has argued that there is no illegality or infirmity in the impugned orders. Therefore, it is urged that the petition is liable to be dismissed.

5. This Court has heard the rival submissions and has perused the record.

6. The complaint under Section 174 of IPC is based on the allegation that on 20.09.2023, the petitioner had failed to appear before the

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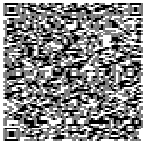


Sub Divisional Judicial Magistrate in response to the summons issued in compliance of order dated 04.08.2023. He was cited as a witness in that case. Section 174 of IPC provides punishment for committing offences of non-attendance or omission to produce documents or electronic record by person legally bound to produce, in obedience of an order from the public servant. The ingredients of offence punishable under Section 174 of IPC are:

- (i) that the summons for public attendance must be issued by a public servant who was legally competent to issue the same;
- (ii) that the person summoned must be legally bound to attend at a certain place and time in answer to the summons;
- (iii) that the person summoned must intentionally have omitted to attend at that place and time.

7. For an offence under Section 174 of IPC, it is incumbent under Section 195 of Cr.P.C. to file a formal complaint since as per this provision, no Court shall take cognizance of any offence punishable under Sections 172 to 188 of IPC except on the complaint in writing of the public servant concerned or of some other public servant under whom, he is administratively subordinate. In this case, no such formal complaint has admittedly been filed by the Sub Divisional Judicial Magistrate, Tosham and simply a letter (Annexure P-1) is shown to have been sent by him to CJM, Bhiwani. As such, it cannot be stated that there was actual compliance of the mandatory provisions of Section 195 of Cr.P.C. Though, it cannot be stated that the Magistrate concerned was wrong in issuingailable warrants to procure the presence of the petitioner, who had to be examined in case arising out of aforementioned FIR, however, it also cannot be stated that

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non-appearance of the petitioner was willful, which warranted action under Section 174 of IPC against him. It does not appear to be a case where the petitioner who was a witness did not want to appear before the Court and give evidence so as to treat his act as willful fault or deliberate act of disobedience by the witness. Further, a perusal of order dated 22.11.2023 (Annexure P-6) reveals that the petitioner appeared as a witness on that date and his examination was completed. Under these circumstances, this Court is of the opinion that there is no necessity to proceed against the petitioner. On reading of order (Annexure P-5) and the letter/complaint (Annexure P-1), this Court is unable to discern any intentional or deliberate omission on the part of the petitioner to respond to the summons. He had appeared on the aforesaid date. In the facts and circumstances, this Court holds that no *prima facie* case is made out against the petitioner for commission of offence under Section 174 of IPC. Accordingly, the impugned complaint filed by Sub Divisional Judicial Magistrate and pending before the Chief Judicial Magistrate as well as order dated 22.11.2024 are hereby quashed and it is made clear that no further proceedings shall be continued against the petitioner based on the said complaint. The petition stands allowed accordingly.

31.10.2025
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No