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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 8th January, 2025*

+ **CRL.M.C. 2117/2021 & CRL.M.A. 14252/2021**

1. KEW PRECISION PARTS PVT LTD
Through its Director/Authorized Agent
MR MUNISH KUMAR BHUNSALI
Registered Office: 41, DLF, Industrial Area,
Kirti Nagar, New Delhi- 110015Petitioner No.1
2. MUNISH KUMAR BHUNSALI
S/o. Late Mahendra Kumar Bhunsali
R/o B - 384, New Friends Colony,
New Delhi - 110025.Petitioner No.2
3. MOHIT KUMAR BHUNSALI
S/o Munish Kumar Bhunsali
R/o B - 384, New Friends Colony,
New Delhi - 110025.Petitioner No.3
Through: Mr.Mohit Chaudhary, Mr. Kunal
Sachdeva and Ms. Nimmi Babu,
Advocates.

Versus

1. STATE of NCT of DelhiRespondent No.1
2. KOTAK MAHINDRA BANK LTD.
Having its registered office at:
27 BKC, C 27, G Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051
Having its branch office at:
1 /11 First floor, East Patel Nagar,



New Delhi- 110008

Through its Authorized Representative

Mr. Suyash Narayan

.....Respondent No.2

Through: Mr. Shoaib Haider, APP for the State with SI Lokesh Kumar, P.S.New Friends Colony.
Mr. Ravi Gupta, Sr. Adv. with Mr. Mahip Datta Parashar and Ms. Sanya Lamba, Advs. for R-2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. Petition under Section 482 of the *Code of Civil Procedure, 1973* ('Cr.P.C' *hereinafter*) has been filed for quashing of the Order dated 20.04.2018 *vide* which the Petitioners No.2 & 3 have been declared "*Absconders*" under Section 82 Cr.P.C. and also for quashing of the **FIR No. 210/2018 under Section 174A Indian Penal Code, 1860** ('IPC' *hereinafter*), registered at Police Station New Friends Colony, New Delhi.
2. The Petitioner No.1- M/s Kew Precision Parts claims to be registered Company under the *Companies Act, 1956* and Petitioners No.2 & 3 are its Managing Directors. Respondent No.2 Kotak Mahindra Bank Ltd. filed a *Complaint Case No. 5006390/2016*, under Section 138 of *The Negotiable Instruments Act, 1881*, against the Petitioners before the Court of learned Chief Metropolitan Magistrate.
3. Respondent No.2 averred in the Complaint that in November,



2012, the accused persons/ Petitioners, who are the Directors and authorized signatories and were responsible for day-to-day affairs of Petitioner No.1-Company, approached Respondent No.2 for availing financial facilities. Respondent No.2/ Complainant sanctioned Loan-II and revised the existing limit of Rs.2215.00 Lacs and issued a Sanction Letter dated 11.03.2013 stating the terms and conditions. The financial facilities were again renewed *vide* Sanction Letter dated 07.02.2014 and Addendum Sanction Letter was also issued on 05.03.2014. A Loan-Cum -Hypothecation-Agreement was signed by Petitioner No.2 along with other documents like Guarantee Deed, Demand Promissory Note, Take Delivery Letter, General Undertaking in respect of loan utilization, mortgage documents, Undertakings etc. in respect of financial facilities granted in their favour by the Complainant.

4. Respondent No.2/ Complainant also alleged in the Complaint that in respect of the above financial facilities, Petitioner No.1 had also passed several Board Resolutions which were signed by the Petitioners and they also stood as personal Guarantor for the entire financial assistance and facilities and repayment of the dues, payable by Petitioner No.1-Company to Respondent No.2/Complainant.

5. Respondent No.2 further alleged in the Complaint that the entire sanctioned amount to the tune of Rs.2,036 lakhs was disbursed to the Petitioner No.1-Company. However, in violation of the terms and conditions agreed upon, no payments were made to the



Respondent No.1/Complainant. After much discussions and persuasions, the Petitioners along with other Directors, issued ten at par Cheques dated 02.09.2016 of different values; however, on presentation in the Bank, the cheques were returned dishonored with the remarks “*Account Closed*”. According to Respondent No.2, the account of Petitioner No.1 was closed but still they issued cheques towards discharge of legally enforceable and existing liability and thus, they committed offence under Section 138 of the *Negotiable Instruments Act*.

6. The Complainants also sent Legal Notice to the Petitioners; however, they failed to make payment within the statutory period of 15 days. However, a Reply dated 06.11.2016 was received by Respondent No.2/Complainant, denying liability to make payment. Respondent No.2/ Complainant, thereafter, filed a Complaint under Section 138 of the Act before the learned Trial Court.

7. The summons in the Complaint were issued against the Petitioners on 26.11.2016. Since none appeared on behalf of the Petitioners on 02.05.2017, the learned Trial Court issued Non Bailable Warrants against the Petitioners, which were returned unexecuted. *Vide* Order dated 30.06.2017, the learned Trial Court issued process under Section 82 Cr.P.C. against Petitioners No.2 Sh. Munish Bhunsali & 3Sh. Mohit Bhunsali.

8. On 20.04.2018, statement of Investigating officer, ASI Chotey Lal, was recorded wherein he stated that he had gone to the given



address of Petitioners No.2 and 3, where he met the Guard who told that they were not residing at the given address. The IO affixed the copy of the process on the Main Gate and the Court Complex, Dwarka. Thereafter, he also loudly announced the process (*munadi*), in the presence of several persons, including the neighbours. On the basis of the statements of the IO, the Petitioners were declared '*Absconders*' by the learned Court.

9. On 14.08.2018, FIR No.210/2018 was registered at Police Station Friends Colony, New Delhi for the offence under **Section 174A IPC** and Final Report of even date was filed in the Court. Thereafter, on 28.09.2018, Petitioner No. 3- Mohit Bhunsali was arrested by the Police and he was sent to 14 days' judicial custody. However, Petitioner No.2 could not be traced.

10. The Petitioners have challenged the impugned Order dated 20.04.2018 declaring them offenders, on the ground that the learned Trial Court has not applied its judicial mind before issuing process under Section 82 Cr.P.C. It is submitted that the Complainant in the Complaint has mentioned their address as B-384, IInd Floor, New Friends Colony, New Delhi instead of B-384, Ground Floor, New Friends Colony, New Delhi; whereas the two addresses mentioned have two separate passages and Gateway; and because of incorrect address mentioned in the Complaint, the summons could not be served upon the Petitioners on their correct address. It is also averred that perhaps for this reason only, the Legal Notice allegedly sent by



Respondent No.2, could not be delivered at their address.

11. Learned Counsel on behalf of the Petitioners has argued that the learned Trial Court did not try to ascertain the correct address of the Petitioners and erroneously declared the Petitioners as 'Absconders'. Also, the registration of FIR against the Petitioners under Section 174A IPC, is abuse of process of the law and both deserve to be quashed.

12. Submissions heard and Record perused.

13. *Briefly stated*, a Complaint under Section 138 NI Act was filed by the Respondent No.2 against the Petitioners in respect of dishonour of Cheque. The summons were issued against the Petitioners herein for appearance on 26.11.2016. Both the Petitioners herein were duly served and they appeared before the learned M.M on 21.03.2017 through their counsel and filed an exemption Application from appearance which was allowed.

14. Thereafter, on the next date i.e. 02.05.2017 both the Petitioners failed to appear in the Court. Consequently, NBWs were directed to be issued against them which were received unexecuted on 30.06.2017. The learned M.M. observed that from the Report it was apparent that they were evading the arrest and the execution of warrants, consequently, *vide* Order dated 30.06.2017 process under Section 82 Cr.P.C. was directed to be issued against them to be executed by :

(i) reading the proclamation in conspicuous place or town;



(ii) by way of affixation in conspicuous part of the house; and

(iii) by way of affixation in some conspicuous part of the Court.

15. The process under Section 82 Cr.P.C. was duly executed and after recording the statement of the Process Server on 20.04.2018, the two Petitioners were declared as Proclaimed Offender.

16. The *object and purpose* of Section 82 Cr.P.C. was taken note of in Vimlaben Ajitbhajai Patel vs. Vatslaben Ashokbhai Patel (2008) 4 SCC 649, wherein it was observed by the Apex Court that the Section 82 Cr.P.C. was put in the Statute Book for a certain purpose which was to secure the presence of the accused. Once the purpose is achieved, the attachment of the properties directed under Section 83 Cr.P.C. must be revoked. Securing the attendance of an absconding accused is a matter between the State and the accused and the Complainant should not ordinarily derive any benefit therefrom. The procedure envisaged under Section 82 Cr.P.C., therefore, is that the accused has been served or is evading the service of summon, then the warrants must necessarily be first issued.

17. In the case of State vs. Dawood Ibrahim Kaskar (2000) 10 SCC 438, it was observed that the power for issue of Proclamation under Section 82 Cr.P.C. can be exercised by a Court only in respect of a person against whom a Warrant has been issued by it. In other words, Section 82 cannot be invoked in a situation wherein inspite of best efforts of the Police, it could not arrest a person under Section 41 Cr.P.C.



18. In its recent judgement, the Apex Court in Daljit Singh v. State of Haryana 2025 SCC OnLine SC 1 has reaffirmed the principles on Section 82 Cr.P.C as laid down in Dawood Ibrahim Kaskar (supra).

19. Therefore, before invoking the powers under Section 82 Cr.P.C the Magistrate is required to satisfy itself that the accused is either evading or intentionally hiding and avoiding the execution of the Warrants.

20. The *first contention* of the Petitioners to challenge the correctness of being declared as Absconders is that there was no satisfaction recorded by the learned M.M. about the Petitioners absconding or avoiding appearing in the Court.

21. However, as discussed in detail, the learned M.M. had duly observed in its Order dated 30.06.2017 that from the Report on NBW it was evident that they were evading the Warrants. It is evident that the Petitioners were duly served and had even appeared through Counsel and sought exemption from appearance, on 26.11.2016 and they were well aware of the proceedings of the Court.

22. Pertinently, despite having put in an appearance before the learned M.M., they chose to absent themselves from the subsequent dates. The learned M.M. was thus, right in observing that the Petitioners were intentionally avoiding appearance in the Court and consequently issued Non-bailable warrants ('NBW' *hereinafter*) though they were also returned unexecuted. The learned M.M. in its Order dated 20.04.2018 observed that from the Report on NBW it was



apparent that they were avoiding the execution of Warrants.

23. In the case of Sunil Tyagi vs. GNCT of Delhi CrI. M.C.5328/2013 decided on 20.06.2021 by the Coordinate Bench of this Court it has been observed that where a person is declared as Proclaimed Offender, it leads to serious offence under Section 174A IPC which is punishable upto 3 or 7 years. It affects the life and liberty of a person under Article 21 of Constitution of India and thus, it is necessary to ensure that the process of Section 82 and 83 Cr.P.C. is not issued in a routine manner and that due process of law is followed. However, a word of caution needs to be stated that these processes may not be used by the Court or the Police for seeking presence of the accused as compulsive processes. The past experience has shown that on the one hand people are being declared Proclaimed Offender without proper service of Summons or execution of Warrants. On the other hand, a large number of people who have been declared Proclaimed Offenders ensure that the trials are indefinitely delayed.

24. The Madras High Court in Nachi Exports vs. Thicuvengadam & Sons 2008 CrI.J (NOC) 278 (Mad.) observed that the Court should consider the factors such as whether the accused was aware of the NBWs issued against him and also regarding the effort taken by the officer concerned for its execution and obviously where the accused is evading arrest by adopting foul play or tactful means.

25. Similar observations have been made in the case of Sanjay



Bhandari vs. GNCT of Delhi Crl. Rev. P. No.223 decided on 31.07.2018.

26. The procedure followed by the learned M.M. was in accordance with what is envisaged under law. Before issuing the process, the presence of the Petitioners was sought through NBW which were returned unexecuted. Further, after recording satisfaction that the Petitioners were evading the process, Section 82 Cr.P.C. process was initiated and the manner in which it was to be executed was also indicated.

27. Further, the Process Server duly executed the process by following the procedure of pasting the Notice at the gate of the property as well as the Court premises and also by doing a *Munadi* outside the house of the Applicants. This is not only evident from the Report of the Process Server on the process under Section 82 Cr.P.C, but also from his statement recorded by the learned M.M on 20.04.2018.

28. The record thus, shows that the procedure under Section 82 Cr.P.C. in its true earnestness, was followed by the learned M.M. and after recording a satisfaction of the Petitioners absconding, they were declared as Absconders *vide* Order dated 20.04.2018.

29. The *main contention* of the Petitioners is that the process has been executed at B-384, Second Floor, New Friends Colony when in fact their resident was B-384, New Friends Colony, New Delhi.

30. First and the foremost, the address of the premises is correct.



Even though in the process under Section 82 Cr.P.C., the address indicated is Second Floor, but the Process Server in his Report has clearly stated that the process was executed at Premises No. 384, New Friends Colony, New Delhi. Furthermore, the Notice has been put on the main gate and *Munadi* has also been done outside the premises. It cannot be, therefore, said that the process has been executed at an incorrect address.

31. It is pertinent to note that the Petitioners have not even qualified or explained that they were not in possession of the entire property or there was somebody else residing on the Second Floor, except that there are separate entrance for ground and second floor. Be as it may, the process has been duly executed at the address of the Petitioners and, therefore, there is no infirmity in the impugned Order declaring the Petitioners as Proclaimed Offender.

32. It is hereby clarified that any observations made herein are for the purpose of adjudication of the present Petition and shall not prejudice the defence of the Petitioners during their trial in the Chargesheet under Section 174A IPC.

33. The Petition is disposed of accordingly along with the pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE

2025:DHC:995



JANUARY 8, 2025

rk/va

Signature Not Verified

Digitally Signed
By: VIKAS AKORA
Signing Date: 17.02.2025
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