

PUNJAB AND HARYANA HIGH COURT

*Before: Mr. Justice Sureshwar Thakur*

KAWALJIT SINGH - Petitioner,

*Versus*

SHASHI KANT WADHAWAN and another - Respondents.

CRM-M No. 47025 of 2021

**Negotiable Instruments Act, 1881 (26 of 1881), S. 138 - Criminal Procedure Code, 1973 (II of 1974), Section 446 - Accused on bail - Non appearance - Summons issued for appearance returned by the serving agency, with the report that service could not be effected - Consequently, the appropriate course in law, was to order for the issuance of a Court notice upon the petitioner, for ensuring that he records his personal appearance before her - Nonetheless, in a most slipshod, and, posthaste manner, and, without adopting the afore procedure, the learned Judicial Magistrate Ist Class rather proceeded to make an order cancelling the personal and surety bonds, for ensuring his personal appearance - There has been the utmost departure from the procedure contemplated in the Cr.P.C., for ensuring the presence of the errant accused - It was rather open for the learned court to either re-issue summons or to issueailable warrants, and, only on failure of obedience thereto, to proceed to issue non-ailable warrants - Issuance of non-ailable warrants, without any tangible evidence existing on record, that there being any willful non-appearance of the accused does make a deep intrusion into the personal liberty of the petitioner, and, requires to be undone - Order issuing non-ailable warrants quashed.**

*Mr. P.S.Sarna, for the petitioner.*

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**Sureshwar Thakur, J. (ORAL) - (24.11.2021)** - The accused-petitioner herein, is facing a notice of accusation, before the learned Judicial Magistrate Ist Class, Chandigarh, in respect of dishonour of the negotiable instrument concerned. A complaint under [Section 138](#) of the Negotiable Instruments Act, constitutes aailable offence, and, also is triable as a summons case.

2. A perusal of the impugned order, appended with the petition, discloses that earlier to 06.10.2021, summons were issued upon the petitioner-accused, for ensuring his presence before the learned Judicial Magistrate Ist Class concerned, yet, the summons were returned by the serving agency, with the report, that service thereof, could not be effected upon the petitioner. On 06.10.2021, in the pre lunch session, the case was listed before the learned Magistrate concerned for the cross-examination of CW-1, however given the accused not recording his personal appearance. As such for the afore purpose, it was again ordered to

be listed in the post lunch session. However, in the post lunch session, the learned Judicial Magistrate 1st Class concerned, yet insisted upon the appearance, before her, of the accused, despite the fact that the summons, as became issued upon him, for his recording his personal appearance, were reported by the serving agency, to be not served upon the accused-petitioner herein. Consequently, the appropriate course in law, to be recoured by the learned Judicial Magistrate 1st Class concerned, was to order for the issuance of a Court notice upon the petitioner, for ensuring that he records his personal appearance before her. Nonetheless, in a most slipshod, and, posthaste manner, and, without adopting the afore procedure, the learned Judicial Magistrate 1st Class concerned, rather proceeded to make an order cancelling the personal and surety bonds, as became furnished by the petitioner, before her, for ensuring his recording his personal appearance, before the learned Judicial Magistrate 1st Class concerned. Further, the legal sequel thereof, appears to be that the learned Judicial Magistrate 1st Class intended to recourse the mandate, enshrined in Section 446 Cr.P.C. Moreover, the learned Judicial Magistrate 1st Class concerned also ordered for issuance of non-bailable warrants upon the petitioner herein, returnable for 1.11.2021, for ensuring that he records his personal appearance before her.

3. As afore stated, and, retreatedly there has been the utmost departure from the procedure contemplated in the Cr.P.C., for ensuring the presence of the errant accused, before the learned Judicial Magistrate 1st Class concerned, even when the summons concerned, as were issued upon him, for his personal appearance, before the Court concerned, remained evidently endorsed by the serving agency, to be not served, upon him. Retreatedly also thereafter, it was rather open for the learned Judicial Magistrate 1st Class concerned, to either re-issue summons or to issue bailable warrants, and, only on failure of obedience thereto, by the accused, despite valid service hence caused upon him, to hence proceed to issue non- bailable warrants, than at the outset to in a slipshod, and, in a posthaste manner, order for the issuance of non-bailable warrants, and, that too, without any tangible evidence existing on record, that there being any willful non-appearance of the accused, before her.

4. The afore legal infirmity does make a deep intrusion into the personal liberty of the petitioner, and, requires to be undone.

5. Therefore, after quashing the impugned order, non-bailable warrants, if not issued, be not issued, and, if already issued, be recalled forthwith as unexecuted.

6. Moreover, no proceeding, as under contemplation, through recourse being made to Section 446 Cr.P.C., be drawn by the learned Magistrate concerned.

7. However, as assured by the learned counsel for the petitioner, the latter shall cause his personal appearance, before the learned Magistrate concerned, on 04.1.2022.

8. The petition stands disposed of.

9. Copy dasti.

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