

Criminal Case No. 980 of 2019

Order below Exh. 14

1. *Heard learned advocates for the complainant Mr. A. T. Sheth, read the application and perused the record.*

2. *By way of present application, the learned advocate for the complainant Mr. A. T. Sheth submitted that the complainant filed complaint against the accused for the offence punishable under Section 138 of the N. I. Act. He further submitted that on submission of the complaint as filed by the complainant, process was issued against the accused, but the accused was residing and doing business at Vijaywada, Andhra Pradesh therefore, the summons as issued against the accused was not returned back. He further submitted that the accused is trying to avoid service of summons. Therefore, he prays to hand over the summons to the complainant for submitting the same in the office of S. P. Vijaywada and he prays to give direct service.*

3. *I have gone through the facts as averred in the present application as well as the facts as submitted by the learned Advocate for the complainant and on perusal of the record, it appears that on dtd. 16.05.2019, the complainant filed the present complaint against the accused for the offence punishable*

under Section 138 of the Negotiable Instrument Act and it appears that on presentation of the complaint the summons was issued against the accused and the same was ordered to returnable on dtd. 17.06.2019, but it transpires that the accused is residing out of the jurisdiction of this Court and residing as well as doing business at Vijaywada, Andhra Pradesh and it appears that due to the said reason, summons as issued by my learned Predecessor while taking cognizance on the complaint as filed by the complainant, the said summons was not returned back either served or unserved. Further, it transpires that thereafter, the matter was kept on dtd. 16.07.2019 and thereafter, it appears that time and again the present case was adjourned for service of summons to the accused, but nothing transpires from the record that before 01.12.2020 either the complainant or learned Advocate for the complainant moved any application for issuance of fresh summons against the accused, but it appears that on dtd. 01.12.2020 by Exh. 11, learned Advocate for the complainant moved an application to issue fresh summons against the accused and prays that the same be served through the Office of Police Commissioner and considering the facts as averred by the learned Advocate for the complainant in the application at Exh. 11, by passing impugned order dtd. 01.12.2020 said application was allowed and direct service was permitted and matter was kept on dtd. 31.12.2020, but on careful

perusal of rojnama and record and proceeding of the present case on hand, though while passing impugned order below Exh. 11, the complainant was permitted to take direct service to serve the same to the accused by placing the said summons in the concerned police station in whose jurisdiction the accused was residing, but it transpires from the record that though on the prayer of the complainant direct service was granted, but the complainant had not taken any direct service of the summons and it appears that on the returnable date due to not taking summons for service of the same to the accused on dtd. 31.12.2020, again by Exh. 12 learned Advocate for the accused moved similar type of application as he moved at Exh. 11 and while keeping larger interest of justice again the said application was allowed and the summons was again issued against the accused and the same was order to be served through the Office of Police Commissioner, Vijaywada, Andhra Pradesh and the matter was kept on dtd. 05.02.2021 and direct service was also permitted and again while on perusal of the record and rojnama, nothing transpires that though after passing impugned order below Exh. 12 and the complainant was permitted to take direct service, but, neither the complainant himself nor learned Advocate for the complainant have take care to take the summons to serve the same to the accused by submitting the same in the Office of Commissioner of Police, Vijaywada, Andhra Pradesh in

whose jurisdiction the accused is residing and it appears that though after returnable date it means on dtd. 05.02.2021 numerous of adjournments were granted, but nothing transpires from the rojnama of the present case at that point of time neither the complainant nor learned Advocate for the complainant were remains present. Not only that even nothing transpires from the record that the complainant has shown his willingness to take direct service of the summons as he prayed. Not only that even further while considering the rojnama, it appears that though on dtd. 26.07.2021 neither the complainant nor learned Advocate for the complainant moved any fresh application for issuance of summons to the accused, but it appears that the summons was issued against the accused and thereafter, it appears that though the present case was adjourned for numerous of dates, it means on dtd. 09.09.2021, 18.10.2021, but at no point of time, either the complainant or learned Advocate for the complainant made any effort to move any application for re-issuance of the summons to the accused, but it appears from the record that while keeping larger interest of justice and to do substantial justice, the present case was adjourned and further it appears from the record that thereafter, on dtd. 12.11.2021 all of sudden, learned Advocate for the complainant moved an application for issuing fresh summons to the accused and also declared the mobile number and prayed to issue summons against the accused through registered post A.

D. and it appears that while keeping larger interest of justice and for speedy service of summons to the accused, application at Exh. 13 as moved by learned Advocate for the complainant on dtd. 12.11.2021 was allowed and it was directed that the complainant shall bear costs and expenses of registered post A. D. and the matter was kept on 10.12.2021 for returning back of the summons to the accused, but it appears that thereafter, present case was adjourned on dtd. 10.12.2012, 13.01.2022, 07.02.2022, 08.03.2022 and thereafter kept today, but neither the complainant nor learned Advocate for the complainant have taken care to take summons from the Registry of this Court for service of the said summons to the accused by registered post A. D. Not only that even neither the complainant nor learned Advocate for the complainant have shown their willingness or made any effort to deposit the costs and expenses amount in the Registry of this Court for issuance of the summons to the accused by the registered post A. D. for speedy service of the summons to the accused and it appears that though the impugned order as passed below Exh.13 was passed on dtd.12.11.2021, but neither on dtd. 10.12.2021 nor today, learned Advocate remains present or made any effort to take summons from the Registry of this Court to serve to the accused and it appears that today while moving present application learned Advocate for the complainant sought direct service of the summons to the accused, but while on

plain reading of the facts as averred in the present application, learned Advocate for the complainant has not made any submission for facts of issuance of summons afresh against the accused and hand over the same to the complainant for submitting said summons in the Office of the S.P., Andhra Pradesh for serving the same to the accused.

4. Further while considering the facts as averred in the present application and while considering conduct of complainant from that it appears that the present complaint was filed by the complainant on dtd. 16.05.2019 and almost more than 2 ½ years passed, but the complainant has not made any efforts to serve the same to the accused and it appears from the record that learned Advocate for the complainant as well as the complainant are negligent and continuously they fail to take direct service of the summons for service of the same to the accused. Therefore, while considering provisions envisaged under Section 256 of the Code of Criminal Procedure, I am of the view that this is fit case to dismiss the complaint as filed by the complainant due to non-service of summons to the accused, then also while keeping larger interest of justice and for doing substantial justice, I am of the view that for last time with costs if the present application will order to be allowed and fresh summons be ordered to be issued against the accused, then it will serve the justice. Hence, in the

larger interest of justice, I pass the following order :

ORDER

1. *The present application is hereby partly allowed with costs.*
2. *The summons is hereby order to be reissued against the accused and the same is hereby order to be served through Office of the Police Commissioner, Vijaywada, Andhra Pradesh.*
3. *The Registry of this Court is hereby directed to prepare summons against the accused and keep into the sealed cover and hand over the same to the complainant for service of the summons to the accused by police station in whose jurisdiction the accused is residing or doing business.*
4. *The complainant is hereby directed to deposit cost amount of Rs. 2,000/- (Rupees Two Thousand) in Halol Taluka Legal Aid Committee within period of 10 days from today.*
5. *On depositing cost amount of Rs. 2,000/- (Rupees Two Thousand) in Halol Taluka Legal Aid Committee, the Registry of this Court is hereby directed to comply the order as passed.*

6. *Returnable on dtd. 30.04.2022. Direct service permitted.*

Pronounced in open Court today on 1st day of April, 2022.

Dt : 01.04.2022

Place : Halol

*(Prem Hansraj Singh)
Addl. Chief Judicial Magistrate,
Panchmahals @ Halol
(Code No.GJ 00746)*