

C. Case No:-1698 of 2018

Order dated: 03.08.2018.

The representative of the complainant Bank is present by filing hazira.

As stipulated by the previous order today is fixed for S/R and appearance. The summons sent to the accused has not been received back. At this stage the complainant has filed a petition praying for issuance of warrant of arrest against the accused person. The complainant has also filed a Postal Receipt in order to manifest that summons were according sent to the accused person. The complainant has also filed track report showing satisfactory service of the summon.

Ld lawyer for the complainant submitted that the summon issued on the accused may be deemed as good service and warrant of arrest may be issued against the accused person as he is evading the proceeding and thereby dragging this case. In order to establish the point the Ld lawyer for the complainant deeply relied on section 27 of the General Clauses Act as well as the track report.

This is a case instituted under section 138 of the Negotiable Instrument Act. Sections 143 to 147 have been inserted in the said Act by Amendment with effect from 06-02-2003. Section 144 of the Negotiable Instrument Act (as amended) provides mode of service of summons in cases of this nature. The section runs in the following lines.

“144. Mode of service of summons

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) and for the purposes of this Chapter, a Magistrate issuing a summons to an accused or a witness may direct a copy of summons to be served at the place where such accused or witness ordinarily resides or carries on business or personally works for gain, by speed post or by such courier services as are approved by a Court of Session.

(2) Where an acknowledgment purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorised by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.”

Therefore from the bare reading of the section it is clear that this court is empowered to issue a copy of summons upon the accused person by speed post. Here in this case a postal receipt has been filed. It must be mentioned here that the mode of service of summon as provided by Section 144 is a different from section 62 of the Criminal Procedure Code 1973 and by the use of the word “Notwithstanding” the Negotiable Instruments Act 1881 has provided for an alternative mode of service. Therefore section 62 of the Criminal Procedure Code would not be attracted for the purpose of cases like this. Any other interpretation would not hoist the cause of speedy disposal of cases of this nature and that would obviously transgress the clear intention of the legislature. Moreover the complainant cannot be saddled with the duty when indeed summons were sent in the right address and the presumption under section 27 of the General Clauses Act militates against the accused person. Moreover the track report shows that the summon has been served satisfactorily. Hence based on the above delineation I do concur with the ld lawyer for the complainant and hold the service to be satisfactory.

On repeated calls none appears and none moves for the accused persons. It is now 01.20 PM.

Considering this laggardness on the part of the accused persons, the accused persons deserve no leniency. Hence issue W/A [bailable] against the accused person no. 02 and DW against accused person no.01.

Complainant to file requisites.

Returnable date for W/A be fixed on **23-04-2019**.

Typed by me;

Additional Chief Judicial Magistrate
Bidhannagar