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

% *Judgment reserved on: 28.09.2026*
Judgment pronounced on: 09.10.2026

\# **CNR No. DLHC010027682025**

\+ **CRL.M.C. 500/2025 & CRL.M.A. 2359/2025**

TAJINDER MOHAN SINGH .....Petitioner

Through: Mr. Jitender Ratta, Advocate (*through videoconferencing*).

versus

THE STATE (GOVERNMENT OF NCT OF DELHI) .....Respondent

Through: Mr. Amit Ahlawat, APP for State with SI Virander Singh, PS Kalkaji.

CORAM:

HON'BLE MR. JUSTICE GIRISH KATHPALIA

J U D G M E N T

1. Petitioner/accused seeks quashing of FIR No.335/2024 of PS Kalkaji for offence under Section 174A IPC on merits. I heard learned counsel for petitioner and learned APP for State on 28.09.2026 and reserved the matter for orders.

2. The petitioner, who was arrayed as accused in complaint under Section 138 Negotiable Instruments Act, was declared absconder vide order dated 29.01.2024 and consequently, the impugned FIR under Section 174A

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IPC was registered against him. The only ground raised by the petitioner to seek quashing of the impugned FIR is that he was declared absconder without there being service of summons or execution of warrants. According to petitioner, he was not residing or even working at the addresses on which the summons and warrants were sent by the trial court.

3. Learned counsel for petitioner contended that the impugned FIR is liable to be quashed because the address on which summons were sent by the trial court was not his correct address. It was contended that since the year 2018, petitioner was not residing or even working at the two Ludhiana addresses mentioned in memo of parties of the complaint. It was also contended that under Section 82 CrPC, the contemplated satisfaction of the court has to be objective and not subjective satisfaction. It was also submitted that the complaint case under Section 138 Negotiable Instruments Act, in which summons were issued culminating into proclamation and the consequent FIR, has already been disposed of as compromised.

4. Learned APP, on the other hand opposed the petition, submitting that the ground raised in this case for quashing of the FIR is a matter of trial and it is settled legal position that while exercising inherent powers, the High Court shall not conduct mini trial. Learned prosecutor also contended that it is only through full dress trial that residence of the petitioner can be proved.

5. It would be apposite to briefly traverse through the legal position relevant for present purposes.

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5.1 Chapter VI of the Criminal Procedure Code (*CrPC*) as well as Chapter VI of Bharatiya Nagarik Suraksha Sanhita (*BNSS*) deal with the processes to compel appearance. The provisions under Section 62 CrPC and Section 64 BNSS clearly stipulate that the summons shall, if practicable be served personally on the person summoned, by delivering to him one of the duplicates of the summons. The provision under Section 64 BNSS introduced maintenance of certain records and recognition of service by electronic mode, but those newly introduced provisions in Section 64 BNSS are not relevant for present purposes. Section 64 CrPC and Section 66 BNSS clearly stipulate that where the person summoned cannot be found by exercise of due diligence, the summons may be served by leaving one of the duplicates for the person summoned with some adult member of his family residing with him. Section 65 CrPC and Section 67 BNSS stipulate that where despite due diligence, service of summons cannot be effected in the above prescribed manner, the Process Server shall affix the summons at some conspicuous part of the house in which the summoned person ordinarily resides; and the trial court may declare the summons served, after making such inquiries as it thinks fit, or may order fresh service of summons.

5.2 The provision under Section 87 CrPC and Section 90 BNSS contemplates that the court may issue warrants of arrest of a person after recording its reasons in writing to believe that the person concerned has absconded or will not obey the summons.

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5.3 Then comes the provisions under Section 82 CrPC and Section 84 BNSS, which contemplate that if the court has reasons to believe (*whether after taking evidence or not*) whether a person against whom a warrant had been issued has absconded or is concealing himself to prevent execution of the warrants, the court may publish written proclamation requiring him to appear at a specified place and time not less than 30 days from the date of publishing such proclamation. For limited purposes of the present case, it has to be noted that the said provisions also contemplate that the proclamation shall be published by affixing the same in some conspicuous part of the house in which such person ordinarily resides and publicly reading the same in some conspicuous place of the town or village where the such person ordinarily resides.

5.4 The provision under Section 174A IPC (*Section 209 of BNS*) stipulates punishment of imprisonment for a term up to three years or fine or both against a person who fails to appear in compliance with the proclamation published under Section 82(1) CrPC; and punishment of imprisonment for a term up to seven years and fine when a declaration has been made under Section 82(4) CrPC pronouncing him as Proclaimed Offender.

5.5 In the case of ***Inder Mohan Goswami & Anr vs State of Uttaranchal & Ors.***, (2007) 12 SCC 1, the Supreme Court after detailed analysis of the above cited provisions of law held that the power of issuing warrants being

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discretionary must be exercised judiciously with extreme care and caution by balancing personal liberty of the accused and societal interest. Sounding a word of caution, the Supreme Court held that the warrants, be it bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind on account of extremely serious ramifications which ensue on issuance of warrants. It was held that non-bailable warrants should be issued to compel appearance of the accused in court only when the summons or bailable warrants would be unlikely to have the desired result. Before issuing warrants, the court must record that it is reasonable to believe that the accused shall not voluntarily appear in court or the police is unable to locate him for service of summon or where it is considered that the accused could harm someone if not immediately taken into custody.

5.6 In the case of ***Sanjabij Tari vs Kishore S. Borcar & Anr.*** , 2025 SCC OnLine SC 2069, the Supreme Court after detailed analysis of legal position issued a number of directions dealing with the complaints under Section 138 Negotiable Instruments Act including the direction that the service of summons shall not be confined through regular process but shall also be issued *dasti,* to be served by the complainant; that additionally, the summons shall also be served through electronic mode using the email address, mobile phone number and/or WhatsApp message on the basis of details to be provided by the complainant on affidavit; and that the complainant shall file affidavit of service of summons before the trial court, which if found false, the court shall take appropriate action.

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6. A careful analysis of the provisions of law cited above would show the explicit intent of legislature to emphasise on the place where the person summoned "*ordinarily resides*". Be it for service of summons or execution of warrants of arrest or even publication of proclamation of absconder or Proclaimed Offender, the objective consideration is connected with the house in which the person concerned ordinarily resides. In other words, if the summons or warrants or proclamation are directed to a place where the person concerned does not ordinarily reside, there cannot be a valid service of summons or execution of warrants or publication of proclamation. And consequently in such a case, it cannot be said that the person concerned fell in default and thereby, committed an offence under Section 174A IPC or Section 209 BNS.

7. Keeping in mind the above cited legal position, I have perused the digitized record of the trial court in order to examine flow of the proceedings before the learned trial court.

7.1 The complaint case under Section 138 Negotiable Instruments Act was listed for the first time before the trial court on 19.08.2017 and after completion of pre-summoning proceedings, the learned trial court took cognizance of the offence on 31.07.2018 and issued summons to the present petitioner returnable on 09.01.2019.

7.2 The summons returnable on 09.01.2019 were sent by way of Registered Post, but it seems that the envelope containing those summons

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returned undelivered to the trial court. Copy of that returned envelope is at pdf page 71-72 of the digitized record of trial court. On 09.01.2019, by the time the matter came up before the trial court, apparently the summons had not returned, so the learned trial court ordered issuance of fresh summons to the petitioner, returnable on 09.07.2019.

7.3 But on 11.01.2019 at 04:08pm, the trial court took up the file *suo motu* and observed that the summons had returned unserved and that it appeared that the petitioner was deliberately avoiding the service, so bailable warrants were ordered against the petitioner returnable on 09.07.2019.

7.4 The said bailable warrants returned with the specific report that at both the given addresses, the petitioner was not found residing and/or working for past four years and had shifted to some other unknown place. But on 09.07.2019, the learned trial court recorded (*without any basis or reasons*) that the petitioner was deliberately avoiding arrest, and ordered issuance of non-bailable warrants returnable on 20.11.2019.

7.5 The non-bailable warrants also returned unexecuted with the report that at both the given addresses, the petitioner was found neither residing nor working and had shifted to some other unknown place. Again on 20.11.2019, the learned trial court recorded (*without any basis or reasons*) that the petitioner was deliberately avoiding arrest, and ordered issuance of process under Section 82 CrPC against him, posting the matter to 12.05.2020 for recording statement under Section 82 CrPC of the Process

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Server.

7.6 In the meanwhile, apparently the Covid lockdown started.

7.7 On 23.06.2022, the learned magistrate recorded that the previous process had not been received back so fresh process be issued returnable on 23.02.2023. The said process under Section 82 CrPC again returned with the report that at both the given addresses, the present petitioner was found not residing or working; but despite that the concerned Head Constable pasted the process outside both premises.

7.8 On 23.02.2023, the learned trial court held that the process under Section 82 CrPC stood executed, so Process Server was summoned for recording his statement on 22.11.2023.

7.9 Thereafter, it is on 29.01.2024 that statement of Process Server was recorded and the present petitioner was declared absconder and the SHO concerned was directed to register FIR against the present petitioner.

7.10 Consequently, the presently impugned FIR was registered.

8. In the present case, flow of the trial court proceedings as narrated above shows that the trial court proceeded post-haste in declaring the petitioner as absconder, without examining whether the processes concerned were addressed at the place, where the petitioner ordinarily resides.

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8.1 To begin with, as mentioned above on 09.01.2019, the trial court ordered issuance of fresh summons to the petitioner returnable on 09.07.2019.

8.2 But immediately thereafter on 11.01.2019, that too after 04:00pm, for the reason best known to the magistrate presiding over the trial court, the matter was taken up *suo motu* by the trial court. There was no such occasion for the trial court to do so. Not only this, despite the return of the envelope containing summons, the trial court held without recording any basis or reason that the summons had returned unserved and it appeared that the petitioner was deliberately avoiding service. There was no material before the trial court to hold that the petitioner was avoiding service of summons.

8.3 Similarly, despite the warrants (*both bailable and non-bailable*) returning with a clear report that the petitioner had not been residing or working at the given addresses for past about four years, the trial court in a mechanical manner held that the petitioner was deliberately avoiding arrest.

8.4 Even as regards the proclamation, similar observations were made by the trial court, culminating into directions to register the FIR which is impugned in the present case.

8.5 It seems that the trial court did not peruse the reports of the Process Servers and the police officials on the processes, and preferred to rely solely

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upon the report of the *ahlmad*.

9. In view of serious consequences that entail the proceedings under Section 82 CrPC, the courts have to be cautious before arriving at findings adverse to the accused persons. One is not oblivious of high pendency of complaint cases, especially those under Section 138 Negotiable Instruments Act. But that cannot be accepted as a valid justification for any court to proceed post-haste towards declaring an accused as absconder. It is for this reason that the legislature has enacted the above quoted provisions of CrPC and BNSS to ensure that an innocent does not suffer the harshness of law. At the same time those safeguards also keep in check a mischievous complainant, who would furnish address of the accused falsely and procure orders under Section 82 CrPC and the consequent registration of FIR made under Section 174A IPC.

10. At each stage, be it the service of summons or execution of warrants or publication of the proclamation, the trial court has to arrive at findings of service or execution or publication on the basis of an objective examination of record. At each stage, the trial court has to record reasons before holding that the summons stand served or the warrants stand unexecuted or the proclamation was correctly published. While issuing warrants of arrest of a person, the trial court must record reasons in writing which makes the court believe that the person concerned has absconded or will not obey the summons. The least a trial court is expected to do is to carefully read report of the Process Server on the returned summons and the serving police

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official on the returned warrants, instead of simply relying upon the endorsement/report made by the court staff on the ordersheets.

11. In the present case, as regards the residential address of the petitioner, the memo of parties of the complaint case mentions two addresses, on both of which the petitioner was found not residing or working. Those addresses are House No.34, Sector 5, Guru Gian Vihar, Model Town, Ludhiana and 4075, Daba Road, Shimla Puri, Ludhiana. The petitioner has placed on record as Annexure A-9 to this petition, a copy of his Aadhar Card reflecting his address as House No.2085, Dhandra Road, Durg Basant Avenue, Ludhiana.

11.1 As mentioned above, the State has opposed this petition on the solitary ground that the question as to whether the present petitioner was duly served with summons/warrants and as to whether he had not been residing or working at the given address is a matter of trial. It certainly would have been a matter of trial, had the record been otherwise. Where the record itself establishes a factual position, there cannot be any occasion to hold trial. As recorded above, at the very first instance when the summons sent to the petitioner returned, the report of the Process Server was clear and specific that for past about four years, the petitioner was not residing at either of the addresses mentioned in the memo of parties. Despite that, the trial court proceeded ahead and issued bailable warrants, followed by non-bailable warrants on same addresses, and those also returned with the clear and specific report of the concerned police officials that the petitioner was

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not residing or working at either of those two addresses. Despite that, proclamation was ordered at the same addresses. It is writ large on the record itself that both addresses attributed to the petitioner in the complaint case were incorrect, if not false. Therefore, there is no need to conduct trial on this aspect.

12. In view of the above discussion, I have no hesitation to hold that the petitioner was wrongly declared as absconder and consequently, the impugned FIR cannot survive.

13. Before parting with this case, it considered appropriate to remind and direct all the learned courts dealing with criminal trials that henceforth they shall ensure strict adherence with the following directions.

> (a) Of course there is heavy pendency of criminal cases awaiting trial, but the courts have to be conscious that the overburdened dockets do not lead to declaring the accused persons absconder, much less Proclaimed Offender unless there are cogent grounds to believe that the concerned accused is deliberately avoiding service of summons or execution of warrants.
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> (b) At the very inception of the complaint case, the complainant shall be called upon to furnish on affidavit the correct address of the house where the accused ordinarily resides as well as other addresses where summons can be

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served by electronic means.

(c) The findings related to service of summons and execution of warrants shall be supported by way of reasons to be recorded in writing based on objective analysis of the material on record, carried out personally by the judge presiding over the concerned court.

(d) Where the issued process returns with the report that the accused does not reside or work at the given address, the trial court shall call upon the complainant to submit some cogent evidence to show that the accused ordinarily resides at the address disclosed in the complaint case.

(e) Before recording that the accused is deliberately avoiding service or execution of process, the learned judge presiding over the concerned trial court shall personally examine the report of the Process Server or the concerned police official on the returned summons/warrants.

14. In view of the aforesaid, the petition is allowed and FIR No.335/2024 of PS Kalkaji for offence under Section 174A IPC as well as proceedings arising out of the same are quashed.

15. Copy of this judgment be transmitted through worthy Registrar General of this court to all learned Principal District & Sessions Judges of Delhi as well as to the Delhi Judicial Academy for being circulated and brought to the notice of all courts in Delhi dealing with criminal trials, so as

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to ensure that the directions enumerated in paragraph 13 of this judgment are strictly adhered to so that situation similar to the present case does not arise again.

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