

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

+ CRL.L.P. 124/2006

M/S BUMPY UDYOG Petitioner
Through Mr. Inderjit Sharma, Advocate.

versus

M/S SUNDER ENTERPRISES & ORS. Respondent
Through Mr.Parag Chawla, Advocate.

CORAM:
HON'BLE MR. JUSTICE V.K. JAIN

% **ORDER**
23.10.2009

Leave granted. Heard.

A perusal of the proceedings dated 6th March, 2006 shows that on that day, no-one appeared for the complainant and the respondents who were present in the court informed the learned Magistrate that they had made payment to the complainant in terms of the undertaking given earlier in the court on 24th February, 2006. The learned Magistrate took the view that the complainant, after accepting the money from the respondents had stopped appearing without any legal basis and issued bailable warrant of his arrest. On 13th March, 2006, the complainant was again not present though the respondents were present. The learned Magistrate dismissed the complaint on that date, and acquitted the respondents.

2. I am unable to appreciate how the learned Magistrate could have

issued bailable warrant of the arrest of the complainant only on account of his absence on the date of hearing fixed by the learned Magistrate. There is no provision in the Code of Criminal Procedure for issue of warrant against a complainant on account of his absence in a summons case instituted otherwise than on a police report. The appropriate course of action would have been to dismiss the complaint in default if neither the complainant nor his counsel was present as is provided in Section 256 of the Code. In fact, that exactly was the course of action adopted by the Magistrate on 13th March, 2006.

3. It has been stated in para 6 of the petition that on 6th March, 2006, the Advocates were on strike in Tis Hazari Courts and the learned counsel for the appellant, Sh. Ravi Sharma had undergone surgery at Safdarjung Hospital. Being indisposed, the counsel could not contact the complainant. Consequently, the complainant also could not appear before the learned Magistrate on 6th March, 2006. Obviously, since no-one appeared on 6th March, 2006 on behalf of the complainant, the next date fixed by the learned Magistrate also could not have been conveyed to him. It has been stated in para 7 of the petition that when the learned counsel for the petitioner attended the court, on inquiry, he came to know about dismissal of the complaint and acquittal of the respondents. The complainant has also taken the plea that the statement made by the respondents before the learned Magistrate was incorrect and in fact no payment was made by them to it.

I need not go into the question as to whether any payment was actually made to the petitioner/complainant or not, as the complaint was dismissed solely on account of absence of the complainant. I see no reason to disbelieve the ground taken in the petition for the absence of the complainant and his counsel on 6th March, 2006 and consequently on 13th March, 2006. The petition is, therefore, allowed and the order passed by the learned Magistrate on 13th March, 2006 is set aside. As a result, the bail bonds furnished by the respondents stand revived. The parties are directed to appear before the learned Magistrate at 10.00 A.M. on 16th November, 2009. Trial court record, if summoned, be sent back, alongwith a copy of this order.

The petition stands disposed of.

V.K. JAIN,J

OCTOBER 23, 2009
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