

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1439 OF 2013

Mr. Gunvant N. Shah

.. Petitioner

v/s.

The Union of India & Ors.

..Respondents

Mr. Parvinder Singh Sethi i/b Mathews J. Nedumpara for the
petitioner

Mr. H.J. Dedhia, APP for respondent State

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED: 23rd OCTOBER, 2015.**

PC.

1. The respondent no.3 – original complainant had filed a complaint against Manav Drugs Pvt. Ltd. Company (Accused no.1) and its directors for offence under section 138 r/w 141 of the N.I. The petitioner is arrayed as accused no.2, being the director of the accused no.1 company. The learned Magistrate had taken cognizance of the offence and issued process against accused no.1 company and all the directors including the petitioner herein. The accused upon being served had put in their appearance and pleaded not guilty of the offence. The complainant had adduced

evidence, statement under Section 313 of the Cr.P.C. was recorded and the accused no.3 had also examined himself in defence. At the stage of final arguments, an application was filed under Section 311 of the Cr.P.C. for recall and re-examination of accused no.3. The said application was allowed but the accused no.3 not only failed to avail the said opportunity, but had remained absent before the trial Court. The learned Magistrate, therefore, by order dated 25.03.2013 issued non-bailable warrant against the petitioner and the other accused. Aggrieved by this order, the petitioner has filed the present petition and sought following reliefs :-

“(a) to entertain the instant Writ Petition, in relaxation of the rules of procedure, for procedure is only a handmaiden of justice, nay, an aid, a servant of justice and not its mistress, for in the face of the impending illegal arrest and detention, he cannot afford to comply with the entire rules of procedure, except at the cost of the very purpose of this petition being defeated, and to permit him to file a more comprehensive petition in due course or to cure the deficiencies, if any, in the manner known to law;

(b) to quash and set aside the Complaint in Case No.92/SS/2011 pending before the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai;

(c) to quash and set aside the order dated 25th March,

2013 (Exhibit “B” hereto) passed by respondent no.4 issuing non-bailable warrant against the petitioner;

(d) grant an ad-interim injunction restraining the learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai from in any manner proceeding with Case No.92/SS/2011.

(e) to issue an order of ad-interim injunction restraining and prohibiting the respondent nos. 1 to 5 and respondent no.8, their agents and men from in any manner interfering with the life and liabilities of the petitioner, a fundamental right enshrined in the Article 21 of the Constitution of India read with Article 14 and 19 and in particular, the execution of the warrant, issued at the hands of the learned Magistrate on his orders / by his office in pursuance of the orders at this hands (on the Ld. Magistrate) dated 25th March, 2013 by any other order or proceedings connected therewith;”

2. At the outset, it is seen that the petitioner had impleaded the Metropolitan Magistrate as the respondent no.4. The petitioner was directed to file his affidavit explaining the reasons for impleading the Metropolitan Magistrate as a party to the proceedings. Despite directions and several opportunities given, no explanation is given as to why the Metropolitan Magistrate is impleaded as a party to the proceedings. Under the circumstances, the name of the respondent no.4 is deleted from the cause title.

3. The records reveal that the petitioner has not been pursuing this petition diligently. Hence, on 21st October, 2015, a final opportunity was given to the petitioner. Despite which, today when the matter was called out, the learned Counsel for the petitioner submitted that he has no instructions.

4. The proceedings under Section 138 of the N.I. Act pending before the trial Court are at the stage of final arguments. The petitioner has already delayed the said proceedings by adopting dilatory tactics and I find no reasons to adjourn the hearing and thus permit the petitioner to protract the trial. Hence, I have gone through the grounds raised in the petition, including the challenge to the Constitutional validity of Section 141 of the N.I. Act. In my view, none of the grounds can be considered at this stage for quashing the proceedings. The petition has no merits and accordingly the same is dismissed.

(ANUJA PRABHUDESSAI, J.)