

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.589 OF 2015

Susheel G. Bafna .. Applicant
Versus
Union of India and anr .. Respondents

Mr.Niranjan Mundargi, Advocate for the applicant.

Mr.N. Natrajan, Advocate for respondent/appellant.

Mrs.M.R.Tidke, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

DATED : 7th MAY, 2015

P.C. :

1 The applicant herein is the respondent no.2 in the Appeal against acquittal filed by the Union of India. After the admission of the Appeal, action under section 390 of the Code of Criminal Procedure was directed to be taken against the respondent nos.1 and 2. The Union of India – the appellant reported to the Court that notice was not being served upon the respondent no.2. It was submitted that the respondent no.2 had given a false address to the Officers of the appellant i.e. the Officers from the Customs Department, and that, a proclamation be issued against the respondent no.2 requiring him to remain present. This was done. Meanwhile, this Court felt suspicious as to whether the address of the respondent no.2, as mentioned in the Appeal Memo, was proper, and whether the respondent no.2 had indeed given such address, and inquiry was therefore, directed

to be held by an order dated 21st April 2015. The inquiry was entrusted to the Chief Metropolitan Magistrate, Brihan Mumbai.

2 The inquiry is in progress. Interim report has been submitted by the learned Addl. Chief Metropolitan Magistrate. It is clear from the interim report itself that the respondent no.2 had already given his address as 'D-701, Mira Apartments, Mira Road (East), Opp DCC Club, Dist.Thane to the Officers of the appellant. Thus, *prima facie*, it appears that the appellant had given a wrong address of the respondent no.2 in the Memo of Appeal, and then had proclaimed that the respondent no.2 was not being found on that address, and was absconding.

3 By this application, the applicant i.e. respondent no.2 seeks that the warrant of arrest ordered to be issued against the respondent no.2 as well as the proclamation, be cancelled.

4 I have heard Mr.Niranjan Mundargi who submits that the Customs Department was clearly aware of the address of the respondent no.2. He submits that, in fact, the passport of the respondent no.2 was with the Officers of the Customs Department during the pendency of the trial, and that the passport also mentions the address at Mira Road. Mr.Mundargi pointed out, that even during the trial, the respondent no.2 had to face the same problem, and that a proclamation as well as a non bailable warrant was got issued against him by claiming that he was not available at a particular address, though the respondent no.2 had not given that address. Mr.Mundargi points out that the Magistrate had, at that time, observed that the Department had

not attempted to serve the respondent no.2 on his new address, and that, for the lapses committed by the department, the Counsel for the Department had tendered an apology before the Magistrate. Incidentally, the counsel is the same i.e. Mr.Natrajan who appears for the appellant in this matter. Mr.Natrajan once again tenders an apology for the mistakes committed by the concerned Officers of the Department. Mr.Natrajan does not dispute that, in the circumstances, the non bailable warrant ordered to be issued against the respondent no.2, and the proclamation, ought to be cancelled.

5 The warrant ordered to be issued against the respondent no.2 shall stand cancelled. The respondent no.2 shall appear before the Magistrate within a week from today, and shall execute a personal bond in the sum of Rs.20,000/- for his appearance before this Court in the course of the Appeal. In view of this, the proclamation shall also stand cancelled.

6 Application is allowed in the aforesaid terms and stands disposed of.

7 All concerned to act on an authenticated copy of this order.

8 The inquiry that is being held by the Addl. Chief Metropolitan Magistrate, 3rd Court shall, however, continue further. Why, repeatedly, a wrong address of the respondent no.2 is being given and who is/are responsible for the same, needs to be got clarified.

9 The Appeal be listed on board on 17th June 2015 for directions. The Addl. Chief Metropolitan Magistrate, 3rd Court is requested to complete the inquiry, and submit his report by that date.

(ABHAY M.THIPSAY, J)