

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

25 CRIMINAL APPLICATION NO. 2587 OF 2015

REHAN S/O ABDUL KARIM SALAR AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Deshmukh N. E.
APP for Respondent State: Mr. S. N. Kendre
Advocate for Respondent No.2 : Ms. Naseem R. Shaikh

CORAM : V. K. JADHAV, J.

DATE : 29th February, 2016

PER COURT :

1. Heard finally with consent of the parties at admission stage.
2. The applicants are the original accused in Sessions Case No.148/2013 pending before the Additional Sessions Judge, Jalgaon. In the said case, respondent No.2 herein is complainant. Since the applicants remained absent on 19.12.2013 before the Sessions Court in Sessions Case No.148/2013, the learned Additional Sessions Judge has passed order of issuing bailable warrant of Rs.5,000/- against all the applicants/accused. On 07.02.2014, the applicants/ accused persons appeared before the Sessions Court suo motu and submitted an application Exh. 27 for cancellation of the said order. The learned Additional

Sessions Judge, by order dated 07.02.2014, cancelled the bailable warrant issued against the applicants accused with penalty of Rs.30/- each and on the same day, the applicants/accused paid the said amount of penalty.

3. Meanwhile, respondent No.2 herein/original complainant in the Sessions case, had filed a private complaint before the Judicial Magistrate, Jalgaon for the offence punishable under section 229-A read with section 34 of the Indian Penal Code against the present applicants/accused. The learned Judicial Magistrate, First Class, Court No.2, Jalgaon, by order dated 05.05.2014 observed that there is a prima facie case for issuance of process against the applicants/accused for the offences punishable under section 229-A r/w section 34 of the Indian Penal Code and accordingly, by the impugned order dated 27.10.2014, issued process against the applicants/accused. Hence this criminal application.

4. Learned counsel for the applicants submits that since the Sessions Judge, by order dated 07.02.2014, has cancelled the order of issuance of bailable warrant against the applicants/ original accused, the learned Magistrate should not have entertained the Summary Criminal Case No. 400/2014. The learned counsel, in order

to substantiate his contention, placed reliance on the following two cases.

i. AIR 2000 SUPREME COURT 665(1), State of M.P. Vs. S. B. Johari and others

ii. AIR 2009 SUPREME COURT 887, Palwindar Singh Vs. Balwinder Singh and others

5. Learned counsel for respondent No.2 submits that the Magistrate has rightly passed the order of issuance of process for the offences punishable under section 229-A read with section 34 of the Indian Penal Code against the applicants/ accused as there is a prima facie evidence to show that the applicants/accused failed to attend the date before the sessions court without any sufficient cause.

6. So far as provisions of section 446 of the Criminal Procedure Code is concerned, when the bond is executed under the Code in respect of attendance before the court and that is proved to the satisfaction of the Court by which the bond is taken, or of any court to which the case has been subsequently transferred, that the bond has been fortified, then the court shall record ground of such proof and may call upon any person bound by such bond to pay the penalty thereof or to show cause

why it should not be paid. In this case, no such action is taken by the learned Sessions Judge against the applicants accused and on the other hand, by order dated 07.02.2014, cancelled the earlier order of issuance of bailable warrant against the applicants/accused by imposing penalty of Rs.30/- each.

7. The learned counsel for the applicants has pointed out that after cancellation of the order of issuance of bailable warrant, the learned Magistrate has issued process against the the applicants accused for the offence punishable under section 229(A) read with section 34 of the Indian Penal Code.

8. It appears from the record that the fact about cancellation of the bailable warrant issued against the applicants/accused was not brought to the notice of the learned Magistrate before issuance of process. In view of this, the application deserves to be allowed. Hence following order:

O R D E R

i. Criminal application is hereby allowed.

ii. Sessions case bearing SCC No.400/2014 pending in

the Court of Judicial Magistrate, First Class
Jalgaon for the offences punishable under section
229-A read withs section 34 of the Indian Penal
Code is hereby quashed.

iii.Criminal application is accordingly disposed of.

(V. K. JADHAV, J.)

JPC