

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

CRIMINAL APPLICATION NO.174 OF 2016

Jag Mohan Garg ...Applicant

Versus

The State of Maharashtra ...Respondent

.....

Mr. Vijay H. Bhanushali for the Applicant.

Mr. Arfan Sait, APP for the Respondent -State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE :12th FEBRUARY, 2016.

P. C. :

Not on board. Taken on board on being mentioned on the ground of urgency.

2. This is an application filed under section 482 of the Criminal Procedure Code challenging the order dated 3.2.2016 whereby the learned Magistrate had issued non bailable warrant against the aforesaid Applicant for non appearance. The Applicant has also challenged the order dated 9.2.2016 whereby the learned Magistrate has dismissed the application for cancellation of warrant.

3. Heard the learned counsel for the Applicant and the

learned APP for the Respondent -State.

4. The Applicant herein is facing trial for offence punishable under section 138 of the Negotiable Instruments Act. The roznama which is placed on record, indicates that the matter was fixed for appearance on 3.2.2016. The Applicant herein had not remained present hence a non bailable warrant was issued against the Applicant. The Applicant had filed an application for cancellation of bail on 6.2.2016. The Applicant had stated that the case was initially filed at Delhi and in view of the amendment, the case was transferred to Metropolitan Magistrate, 33rd Court, Balard Pier, Mumbai. The Applicant had stated that he had not received the summons, which required him to appear before the Court on 3.2.2016 and that upon making enquiry the Applicant had learnt that warrant was issued. The Applicant had stated that he is not the resident of Mumbai and further stated that he had not received the summons. The Applicant had therefore, prayed for cancellation of bail. The learned Magistrate dismissed the said application on the ground that the pleas of the accused is not recorded.

5. The records reveal that the learned Magistrate has not given any reasons for discarding the reasons stated by the Applicant

and rejecting the said application. The learned Magistrate has also not assigned reasons for not considering the principles laid down by this Court in **Arunkumar Chaturvedi V/s. State of Maharashtra in Criminal Writ Petition No.4429 of 2013**. Even otherwise the records reveal that the Applicant had defaulted only on one hearing and being learnt that warrant was issued, the Applicant had appeared before the Court and sought cancellation of the warrant. The impugned orders are arbitrary and are not sustainable.

6. Under the circumstances, the application is allowed. Impugned orders dated 3.2.2016 and 9.2.2016 are quashed and set aside.

(ANUJA PRABHUDESSAI, J.)