

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.15415 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the proceedings in CrI.M.P.no.2885 of 2016 in C.C.No.412 of 2015 dated 23.09.2016 on the file of Judicial Magistrate of I Class, Kalwakurthy, Mahaboobnagar District, for the offences punishable under Section 138 of Negotiable Instruments Act (for short 'Act'), whereby, the Trial Court dismissed the petition on the ground that the accused was absent on the date when the matter was taken up.

It is the case of the petitioner that the 2nd respondent filed a complaint for the offence punishable under Section 138 of the Act and the petitioner appeared before the Court on four occasions on receipt of the summons at the initial stage. Later, he was absent and thereupon, the petitioner challenged the prosecution proceedings in C.C.No.412 of 2015 by filing CrI.P.No.13004 of 2016 and obtained an interim order dated 02.09.2016, this Court disposed of the criminal petition with a direction that the presence of the petitioner before the Trial Court is dispensed with except on the dates when his presence is specifically required by the Trial Court. The Court also directed the petitioner to be represented through a counsel before the Trial Court on all dates of hearing.

After passing an order in CrI.P.No.13004 of 2016, the petitioner filed a petition under Section 70(2) of Cr.P.C to recall the warrant, raising a contention that he is a permanent resident of Hyderabad

having good reputation and hailed from a respectable family and referred the judgment of this Court reported in **Mr. Bhagwan Premchandani v. The State of Andhra Pradesh rep. by Public Prosecutor and another**¹ and **Raghuvansh Dewanchand Bhasin v. State of Maharashtra and another**², wherein, this Court and Supreme Court laid down certain guidelines for issue of non bailable warrants and directed the Courts to strike the balance between the independent rights and rights of the complainants.

He also further referred to the order passed by this Court in Crl.P.No.13004 of 2016 dated 02.09.2016 wherein the appearance of the petitioner was dispensed with while permitting the advocate to represent him on all dates, except on the dates when his presence is required by the Court and requested to condone the absence of the petitioner and recall the warrant.

In the entire petition, except raising various legal grounds, he did not explain the reason for his absence on the date, while contending that he hails from respectable family, without explaining the reason for his absence on the date of adjournments. Even otherwise, the petitioner did not appear on the date when petition was taken up under Section 70(2) of Cr.P.C to recall the warrant. Therefore, the Trial Court dismissed the petition.

Now the order is challenged on the ground that the order passed by the Trial Court is cryptic without any reasons. No doubt, the order is not reasoned. When the petitioner did not explain any

¹ 1998 (1) ALT (Cri.) (A.P) 110

² 2008 Crl. L.J 2127

reason for his absence, the Court is not required to record reason in its order. When the petition is bereft of any reasons for the absence on the date of issuance of non bailable warrant, the Court is not required to pass a reasoned order. However, the petitioner is supposed to be present on the day when the petition was filed before the Court, but, obviously for different reasons, he was absent and the petitioner wanted to take shelter under the order passed by this Court in Crl.P.No.13004 of 2016. The Court dispensed with the presence which was only from the date of order before the Trial Court, but not on the date when non bailable warrant was issued. Therefore, the order passed by this Court in Crl.P.No.13004 of 2016 would not come to the aid of the petitioner to claim any immunity from appearance before the Magistrate on the date of filing a petition under Section 70(2) of Cr.P.C to recall the warrant issued prior to order of this Court in Crl.P.No.13004 of 2016.

Learned counsel for the petitioner mostly relied on judgment of the Supreme Court in **Vikas v. State of Rajasthan**³, where the Apex Court emphasised the necessity of the circumstances where the non bailable warrant is to be issued and how does it affect the personal liberty and interest of an individual. In paragraph 14 of the judgment, the Supreme Court observed as under:

“The issuance of non-bailable warrant in the first instance without using the other tools of summons and bailable warrant to secure attendance of such a person would impair the personal liberty guaranteed to every citizen under the Constitution. This position is settled in **Inder Mohan Goswami v. State of Uttaranchal**⁴.”

³ (2014) 3 Supreme Court Cases 321

⁴ (2007) 12 SCC 1

In the said judgment, the Apex Court specifically held that in the first instance without issuing summons, non bailable warrant cannot be straight away issued. He contended that issuing non bailable warrant in the instant case without issuing summons. In fact, summons were issued to the accused/petitioner and he attended the Court on four occasions. Thereafter, he was absent and only to secure his presence the Trial Court issued non bailable warrant. Therefore, the principle laid down in paragraph 14 of the above said judgment has no application for the reason that non bailable warrant was not straight away issued in the first instance without utilising other tools like bailable warrant and summons.

Learned counsel for the petitioner also drawn attention of this Court to paragraph 17 of the judgment, wherein the Apex Court distinguished the circumstances where non bailable warrant and bailable warrant has to be issued and it held as follows:

“In the legislative history for the purposes of bail, the term 'bailable' and 'non-bailable' are mostly used to formally distinguish one of the two classes of cases, viz. 'bailable' offences in which bail may be claimed as a right in every case whereas the question of grant of bail in non- bailable offences to such a person is left by the legislature in the court's discretion to be exercised on a consideration of the totality of the facts and circumstances of a given case. The discretion has, of course, to be a judicial one informed by tradition methodized by analogy, disciplined by system and sub-ordinated to the primordial necessity of order in social life. Another such instance of judicial discretion is the issue of non-bailable warrant in a complaint case under an application of Section 319 of the Cr.P.C.”

In the facts of the above judgment, issuance of non bailable warrant in the first instance, was issued to secure the presence of the petitioner/accused without using other tools. Therefore, the order of issuing non bailable warrant was challenged. But, even according to the guidelines laid down in paragraph 17, it is purely the discretion of the Court and the Court has to exercise discretion judiciously.

In **Bhagvan Premchand v. State of Andhra Pradesh**⁵, this Court in paragraph 3 of the judgment emphasised that the Magistrates should shed the wrong practice of issuing non bailable warrants the moment the accused fail to appear in the Court without giving an opportunity to explain the circumstances under which the accused failed to appear in the Court and in the light of the language employed in Section 73 of the Cr.P.C. an non bailable warrant can be issued sparingly that too after coming to the conclusion that there is no other way to secure the presence of the accused.

But, it is difficult to accept the principle for the reason that when the accused was absent before the Court, question of affording an opportunity to explain the circumstances under which the accused failed to appear would not arise, unless his appearance is secured in any of the modes contemplated under Cr.P.C. Curiously, in the present matter, though non bailable warrant was issued, though filed Crl.P.No.13004 of 2016, the same was not challenged before the Court and conveniently obtained an order from the Court thereby dispensed with the presence of the petitioner on all dates of adjournments, except on the dates when his presence is required and

⁵ 1998 (1) ALT (Crl) 110 A.P.

filed a petition to set-aside the order dated 02.09.2016 for recall of the non bailable warrant without attending in the guise of the order passed by this Court taking shelter, whereby his presence was dispensed with by this Court in Crl.P.No.13004 of 2016. This is nothing but misuse of process of the Court. It is also contended that the complaint under Section 138 of Negotiable Instruments Act is a summons case and non bailable warrant cannot be issued straight away at the first instance. A bailable warrant can be issued when there is no such bar and it is only the discretion of the Court even according to the decisions he relied upon.

The present days practice in most of the Courts, particularly in complaints for the offences punishable under Section 138 of Negotiable Instruments Act, the accused is not attending and advocates are also not representing the accused, in such situation the only course open to the Court is to issue non bailable warrant to secure the presence of the accused so as to complete trial of offences, though it is a coercive step, except such harsh step, no other tool of summons and bailable warrant is proved to be futile.

Therefore, I find no ground to recall the non bailable warrant by exercising power under Section 482 of Cr.P.C when the petitioner is conveniently avoiding to appear before the Trial Court and obtained various orders from different Courts, since the jurisdiction under Section 482 has to be exercised sparingly and in specific circumstances, as laid down by the Apex Court in **Bhajanlal's** case (referred supra).

Here, it is apparent that the conduct of the petitioner is only to avoid his appearance before the Court and even on the date of filing the petition, he did not appear before the Court and he neither explained the reasons for his non appearance nor when the petition under Section 70(2) came up for hearing in person. In such circumstances, it is not a fit case to recall the non bailable warrant, setting aside the order passed in Crl.M.P.No.2885 of 2016 in C.C.No.412 of 2015 dated 23.09.2016 on the file of Judicial Magistrate of I Class, Kalwakurthy, Mahaboobnagar District. However, the petitioner is permitted to appear before the Trial Court and file a petition under Section 70(2) of Cr.P.C after issuing notice to the respondents and on filing such application, the Judicial Magistrate of I Class, Kalwakurthy, Mahaboobnagar, is directed to decide the petition and pass appropriate orders on the same day.

With the above direction, the criminal petition is dismissed.

Consequently, miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:28.10.2016
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