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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: 2nd March, 2016

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CRL. M.C. No.923/2016

SANJAY C. KARALKAR

..... Petitioner

Represented by: Mr.Manoranjan Kumar, Mr. Varun
Jamwal and Mr. Ankit Gulia,
Advocates.

Versus

DEN DIGITAL NETWORK AND ORS.

..... Respondents

Represented by: None.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

Crl.M.A. No.3868/2016 (for exemption)

Exemptions allowed, subject to all just exceptions.

Accordingly, the application is allowed.

CRL. M.C. No.923/2016

1. Vide the present petition, the petitioner has prayed as under:-

*“a) Recall the order dated 18.02.2016 and
22.02.2016 and cancel the NBW issued against
the Petitioner;*

*b) Expunged the observation made against the
counsel for an accused;*

*c) Allow the examination of witness u/s 311
without any constraint;*

d) Pass an order to direct the Respondent to pay Rs.34 Lakhs paid by the Petitioner qua the settlement recorded before the ld. Trial Court;

e) Quash the complaint as the Respondent has committed fraud on the court.”

2. The present petition is filed on the ground that the learned Trial Court has erred in passing the impugned orders as NBWs cannot be issued as a measure of punishment. It is only for disciplining the court proceedings, however, it has nothing to do with the merits of the case. As per the High Court Rules and Orders, it has been stated that warrants should not be issued unless absolute necessary. Great care should be taken not to issue a warrant when summon should be sufficient for the ends of justice.

3. Learned counsel appearing on behalf of the petitioner submits that while passing the impugned orders, the learned Trial Court failed to appreciate that the respondent has already demolished his case by taking contrary stand in the case and it is solemn provision of law that one who commits fraud on the Court does not deserve any kind of relief. The learned Trial Court has unnecessarily widened the scope of examination under Section 311 Cr.P.C. by limiting the scope of cross-examination till the documents on record. The impugned orders are contrary to the right of fair justice of the petitioner.

4. Learned counsel further submits that the Ordinance is passed by the Parliament that coercive measure adopted by the Predecessor Court was deemed to be stayed, which is evident from the trial court orders dated 16.10.2015 and 04.11.2015. Moreover, the petitioner

has already paid a sum of Rs.34,00,000/- out of Rs.80,00,000/- in question.

5. He further submits that the petitioner is staying in Mumbai and has been moving applications for exemption, which were allowed by various orders by the learned Trial Court, however, passed the orders which are under challenge in this petition. It is submitted that the petitioner is ready to face trial and undertakes to appear as and when called by the learned Trial Court.

6. In support of his submissions, the learned counsel for the petitioner has relied upon the judgments of ***Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors. (2007) 12 SCC 1*** and ***Bhaskar Industries Ltd. Vs. Bhiwani Denim & Apparels Ltd. & Anr., (2001) 7 SCC 401.***

7. Vide order dated 18.02.2016, the learned Trial court passed the order as under:-

*“Present: AR of the complainant with Ld. counsel.
Accused absent.
Ld. counsel for accused.*

Exemption application on behalf of accused is filed.

Considering the previous conduct and the fact that the transferor court has issued NBW against accused vide order dated 13.05.2015. The said NBW has not been cancelled till date. Though, the exemption application of accused was allowed on the last date of hearing. It seems that accused is deliberately avoiding his appearance. Application dismissed.

DW-1 partly examined. Further examination of DW-1 is deferred for the want of documents.

Issue NBWs against accused through DCP on filing PF.

Put up on 02.03.2016.”

8. In order dated 22.02.2016, the learned Trial Court recorded that the petitioner was summoned vide order dated 28.06.2008 and appeared in the court after issuance of summons and bailable warrants on 10.01.2011. Matter was settled on 03.06.2011. As per the settlement, petitioner had to make the entire payment of settled amount till 24.06.2013, however, failed to make the payment as per the settlement. Thereafter, the petitioner put his appearance through his counsel and kept delaying the matter till 15.01.2013. On 15.01.2013, an application under Section 145(2) Cr.P.C. was filed which was allowed on 20.03.2013. Complainant witness was examined and discharged on 03.02.2014 and matter was fixed for SA. Till 24.06.2014, exemption application of the petitioner was allowed on various dates. On 19.07.2014, application for permanent exemption of the petitioner was allowed subject to the condition that he will be represented through his counsel and will file affidavit that he will not dispute his identity. Such affidavit has not been filed till date. Petitioner failed to lead any evidence in his defence despite various opportunities and finally vide order dated 27.08.2014, DE was closed. Thereafter, application under Section 315 Cr.P.C. was allowed on 10.09.2014 and the petitioner was allowed to lead DE vide orders dated 16.09.2014, 18.09.2014, 14.10.2014, 12.11.2014,

02.12.2014 and 22.12.2014. Appeared none on behalf of the petitioner on 21.01.2015, therefore, DE was closed and NBWs were issued against him. On 11.02.2015, the learned Presiding Officer recused herself from holding the trial due to the conduct of the counsel for the petitioner. The learned CMM, South, vide order dated 11.02.2015 remanded back the case to the CMM Court.

9. On perusal of order dated 22.02.2016, it is revealed that on 11.03.2015 and 12.03.2015, counsel for the petitioner sought adjournment for addressing final arguments. On 23.03.2015, counsel for petitioner again offered to settle the matter. The learned Presiding Officer directed the petitioner to appear in person on 01.04.2015, however, he did not appear and a cost of Rs. 5,000/- was imposed upon the petitioner with the directions to deposit the same in J & K Relief Fund. On 08.04.2015, exemption application of the petitioner was allowed. On 28.04.2015, 13.05.2015 and 29.07.2015 none appeared on behalf of the petitioner and NBWs were issued.

10. It is pertinent to mention here that though on 13.05.2015 and 29.07.2015, the Lawyers were on strike, but there was no embargo for the petitioner to appear in person. Thereafter, on 16.10.2015, the case was transferred in view of the Negotiable Instruments Amendment Ordinance 2015.

11. Despite NBWs were in force, counsel for the petitioner moved an application seeking exemption from personal appearance of the petitioner, however, the learned Trial Court without noticing that NBWs had already been issued against the petitioner, allowed the

said application. On the said date, an application under Section 311 Cr.P.C. was also allowed. Thereafter, on 18.02.2016, the petitioner did not appear in the court and NBWs had already been issued against him.

12. In view of the facts recorded above, conduct of the petitioner shows that how he abused the process of law. He cannot be allowed to abuse the process on the ground of the personal liberty and at the cost of constitutional right of complainant for speedy justice. The complainant has filed the present case in the year 2008 and since then the petitioner is harassing him by prolonging the trial on the frivolous grounds despite the fact that he had settled the matter with the complainant in the year 2011 but failed to abide by the terms and conditions of the said settlement.

13. It is not in dispute that offence under Section 138 NI Act is bailable but accused cannot be allowed to abuse the process of law. Though the learned Trial Court should refrain in passing the NBWs against the accused in the first instance but there is no bar in issuing the same for ensuring his presence and speedy justice.

14. The judgments cited by the learned counsel for the petitioner are not helpful for the reason despite repeated orders, the petitioner failed to appear before the Court and continued to file one application after the other. Moreover, he did not file the affidavit that he will not dispute his identity during the proceedings of this case. It is not in dispute that the petitioner was not granted permanent exemption despite that he has taken the process of law for a ride. Moreover,

conduct of the petitioner has been well described in order dated 26.02.2015, which is at page No. 163 of the paper book.

15. In view of the above recorded facts and the settled position of law, I do not find any discrepancy in the orders passed by the learned Trial Court.

16. Accordingly, the present petition is dismissed.

Crl.M.A. No.3869/2016 (for stay)

With the disposal of the petition itself, the instant application has become *infructuous*. The same is dismissed accordingly.

MARCH 02, 2016
Sb/jg

SURESH KAIT
(JUDGE)