

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP (227) No.179 of 2017**

A.K. Sinha, son of late Shri M.P.Sinha, aged about 53 years, resident of Plot No.201/17, Street No.1, Ashish Nagar, East Risali, Bhilai, District Durg (CG)

---- Petitioner**Versus**

Tapan Kumar Sharma son of Shri L.N. Sharma, aged about 52 years, resident of Plat No.41, Kanchanpuram Apartment, Ashish Nagar (W), Street No.1, Risali, Bhilai, District Durg (CG)

---- Respondent

For Petitioner : Mr.I.S.Sahu, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****6/3/2017**

1. Learned counsel appearing for the petitioner would submit that the petitioner has preferred an appeal before the Chhattisgarh State Consumer Disputes Redressal Commission (hereinafter called as "State Commission") against the order of the District Consumer Disputes Redressal Forum, Durg dated 19.12.2016 and appeal has been admitted and the case has been fixed for final hearing on 3.4.2017, but in the meanwhile, the District Consumer Disputes Redressal Forum, Durg has rejected his application for stay on 22.2.2017 and straightway issued the warrant of arrest against the petitioner on 2.3.2017. Learned counsel would further submit that straightway issuance of warrant of arrest despite that the petitioner's substantive appeal is

pending before the State Commission is unsustainable and bad in law.

2. I have heard learned counsel appearing for the petitioner and perused the documents appended with the writ petition.
3. Since the petitioner's substantive appeal is pending consideration before the State Commission and case has already been fixed for 3.4.2017, it would be expedient to direct the State Commission to hear and dispose of the petitioner's appeal preferably on the next date of hearing i.e. 3.4.2017 or some other date as fixed by the State Commission, but not later than 30.6.2017.
4. In the matter of **Inder Mohan Goswami and Another Vs. State of Uttaranchal and others**¹ the Supreme Court has cautioned the Courts to issue non-bailable warrant at first instance by directing as under:-

“In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable- warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.”

¹ 2007 (12) SCC 1

Their Lordships while concluding, emphasized the need of striking proper balance between individual personal liberty and societal interest/interest of public before issuing warrant by making following pertinent observation:

“The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.”

5. In view of the aforesaid judgment of the Supreme Court, the effect and operation of the impugned warrant of arrest issued against the petitioner on 2.3.2017 shall remain stayed till the petitioner's appeal pending before the State Commission is finally decided. The District Consumer Disputes Redressal Forum, Durg is directed to recall the warrant of arrest issued against the petitioner.
6. With the aforesaid direction, the writ petition stands finally disposed of. A copy of this order be sent to the Chhattisgarh State Consumer Disputes Redressal Commission, Raipur for needful compliance.

Sd/-

(Sanjay K.Agrawal)
Judge

B/-