

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1098 OF 2017

Shri. Pavankumar Savarmal Agarwal ... Petitioner
Versus
The State of Maharashtra and another ... Respondents
.....
Mr. Sharad S. Suryawanshi for the Petitioner.
Mr. S. R. Agarkar, APP for the State
.....

CORAM: RAVINDRA V. GHUGE, J.

DATE : 17th MARCH 2017

PC.:

1. The petitioner is aggrieved by the order dated 2nd March, 2017, by which his application dated 1st March, 2017 seeking cancellation of the warrant has been rejected.
2. Learned counsel for the petitioner strenuously contended that the application for cancellation of the warrant was filed through his Advocate with an undertaking that he would remain present before the Court after the passing of the order.
3. This Court (Coram: M. L. Tahaliyani, J.) by order dated 24th December, 2013 in the case of ***Arunkumar N. Chaturvedi vs. The State of Maharashtra and another*** (Criminal Writ Petition No. 4429 of 2013) has specifically observed in paragraphs 2, 3, 4 and 5, which read as under:

- “2. The Applicant is accused no.2 in Criminal Case No.1304/SS/2006 pending in the Court of Metropolitan Magistrate, 7th Court, Dadar for the offence punishable under Section 138 of Negotiable Instruments Act. The warrant has been issued against the Applicant as he was absent on the date of hearing. The Applicant had applied for cancellation of warrant through his advocate. It is submitted that the application has been rejected by the learned Metropolitan Magistrate on the ground that the Applicant was not present when the application for cancellation of warrant was made before the Magistrate.*
- 3. The judgments of Andhrapradesh High Court and Delhi High Court were cited before the learned Magistrate. The learned Magistrate without considering those judgments has stated that the said judgments were not binding upon him.*
- 4. Since the Applicant was ready to appear before the Magistrate after cancellation of warrant and since there was reasonable apprehension in the mind of the Applicant that he might be put beyond the bars if he appeared before cancellation of warrant, the learned Magistrate should have considered the application on merits.*
- 5. In my considered opinion, there is no law that the accused shall personally remain present for cancellation of warrant. If the lawyer makes an application for cancellation of warrant, the same needs to be considered on merits by the learned Magistrate without insisting the for appearance of the Applicant/accused. It is noted by this Court that many Writ Petitions are filed in this Court only because the learned Magistrate straight way take a view that warrant cannot be cancelled unless accused appears before the Court. The*

view taken by a few of the Magistrates particularly in the city of Bombay, in my opinion, is not correct. It is high time that this Court lets the Magistrate note that the appearance of the applicant/accused is not necessary when application for cancellation of warrant is made. In the circumstances, I pass the following order:-

- (I) The non-bailable warrant issued against the Applicant stands cancelled.*
- (II) The Applicant shall appear before the Trial Court on next date of hearing.*
- (III) The copy of this order shall be forwarded to the Chief Metropolitan Magistrate, Bombay for being circulated to all the Additional Chief Metropolitan Magistrate and Metropolitan Magistrate.*
- (IV) The Writ Petition stands disposed of.”*

4. The learned APP has opposed this petition by contending that the petitioner-accused has not put forth justifiable grounds for not remaining present before the concerned Court when the application for cancellation of the warrant was being heard.

5. I do not find that the contention of respondent No.1-State may be sustained in the light of the view taken by this court in ***Arunkumar N. Chaturvedi vs. The State of Maharashtra and another*** (supra).

6. Considering the above, the impugned order dated 2nd March, 2017 is quashed and set aside. The application for cancellation of the warrant dated 1st March, 2017 is restored to the file of the

learned Metropolitan Magistrate's 52nd Court at Kurla, Mumbai, in Criminal Case No. 953/PW/2014 for a re-hearing. This petition is partly allowed.

7. Needless to state, the concerned Court shall decide the said application on its own merits and by considering the law laid down in the case of *Arunkumar N. Chaturvedi vs. The State of Maharashtra and another* (supra). The statement of the petitioner-accused that he would appear before the Court after the cancellation of the warrant is accepted and he shall be bound by the said statement.

(RAVINDRA V. GHUGE, J.)