

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.865 OF 2017

Manoj R. Thakur ...Applicant.
vs.
The State of Maharashtra and ors. ...Respondent.

Mr. Prashant Gavai for the Applicant.
Mr. Prashant Jadhav, APP. for the State.

CORAM : A.S.GADKARI, J.
DATE : 13th September, 2017.

P.C.

1. The applicant has preferred the present application under Section 482 of the Cr.P.C. for cancellation of non bailable warrant issued by an order dated 12.7.2017 by the learned 9th Civil Judge, S.D., Thane and Additional Chief Judicial Magistrate, Thane.

2. The record indicates that CR bearing No.I-95/2004 is registered against the applicant by Kashimira Police Station, Thane and after completion of investigation it is culminated into CC No.528/2004 and is pending for final adjudication on the file of Additional Chief Judicial Magistrate, Thane (9th Joint Civil Judge, S.D., Thane). That since the applicant did not attend the trial on many occasions, by an order dated 5.8.2010 initially a warrant was issued against the applicant. That, by an order 19.3.2012 the trial Court directed to issue proclamation under Section 82 of the Cr.P.C. against the applicant. The applicant thereafter preferred an application on 12.7.2017 for cancellation of warrant which came to be rejected by an order of the even date of the Trial Court. By a

separate order dated 12.7.2016 the Trial Court has further issued non bailable warrant against the applicant. The said orders are impugned herein.

2. The learned counsel for the applicant submitted that since the wife of the applicant was suffering from an ailment and there was nobody to look after her, he could not attend the relevant dates before the trial Court and also lost the track of the case. He further submitted that his Advocate also did not inform or intimate him about the dates of the trial Court and due to non communication, he could not attend the Court on stipulated dates. He submitted that the applicant has filed an affidavit cum apology before this Court stating that the applicant will attend each and every date before the Trial Court in future and will not commit any default. The record indicates that till August 2010 the applicant and/ or his Advocate used to attend the case diligently, however for the reasons stated by the learned counsel for the applicant, it appears that the applicant could not attend the trial Court subsequently.

3. In view of the above and in the interest of justice, the orders dated 5.8.2010, 19.3.2013 and 12.7.2017 passed by the 9th Joint Civil Judge, S.D. and Additional Chief Judicial Magistrate, Thane are hereby quashed on the following terms and conditions.

a) The applicant shall file an undertaking before the Trial Court on or before 22.9.2017 stating that hereinafter he shall attend each and every date before the Trial Court and shall co-operate in completion of

the said case.

- b) In case of any exigency the applicant shall instruct his Advocate to appear before the Court and shall produce necessary documents in support of his absentee.
- c) The applicant shall appear before the trial Court on 22.9.2017 and on the said date he shall file the said affidavit.
- d) The application is allowed in the aforesaid terms.
- e) All the concerned to act on a copy of this order duly authenticated by the registry of this Court.

(A.S. GADKARI, J.)