

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 953 of 2018**

1. Ram Singh S/o Kamta Rajbhar Aged About 32 Years Occupation Supervisor, Site Office Hirri Mines, Tahsil Belha P. S. Hirri, District Bilaspur Chhattisgarh,
2. Ramesh Patil S/o Suresh Patil Aged About 45 Years Occupation Partner Madhurai Multi Facilities Service Pvt. Ltd. Registered Office A-904, Purendra Society Mahada Building, Maharshi Nagar, Pune 411037,

---- Petitioners**Versus**

- Rakesh Kumar Gupta S/o Shri Ramesh Lal Gupta Aged About 38 Years R/o Naya Sarkanda, P. S. Sarkanda, District Bilaspur Chhattisgarh

---- Respondent

For Petitioner : Shri Vipin Punjabi, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****15/05/2018**

1. Heard.
2. The present petition is against the order dated 19.03.2018, whereby the arrest warrant has been issued against the petitioners.
3. Learned counsel for the petitioners submits that an application under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') was filed by the respondent and the same was registered before the Court of Shri H.K. Ratre, JMFC, Bilaspur, thereafter the order-sheet of 19.12.2017 would show that the Court has issued the notice by ordinary and registered post and the case was fixed for appearance on 19.03.2018. Thereafter, it is stated that when they appeared before the Court of Shri H.K. Ratre, JMFC, Bilaspur, the case file was not found since the case was transferred to the Court of Smt. Chchaya Singh, JMFC, Bilaspur. It is stated that without

sufficient reason the arrest warrant has been issued without application of mind by evaluating the fact that the case has been received on transfer in a mechanical manner without going into the background of the case that the summons was issued for appearance in the other court and the arrest warrant was issued. It is stated such order is illegal and requires to be set aside.

4. Perused the record filed along with the petition. Perusal of the record of the Court below would show that initially a complaint under Section 138 N.I. Act was filed against the petitioners, wherein on 22.11.2017 and subsequently on 19.12.2017, the Court after evaluating the facts and the affidavit which was enclosed with the petition, directed for registration of the complaint against Ramesh Patil & another. Thereafter, the date of appearance was given on 19.03.2018 by the issuing Court of JMFC Shri H.K. Ratre. On 19.03.2018 facts shows that the case was before the JMFC, Smt. Chchaya Singh, JMFC, Bilaspur and the Court initially ordered for issuance of notice by registered post and the case was fixed for 19.04.2018. Again the order-sheet is been written with the caption "*punashch*" and the Court ordered that the notice issued to Ramesh Patil and Ram Singh has been received back with endorsement that it was served. It further records that the call was made, however, no one appeared, therefore, in their absence, the arrest warrant was issued on payment of process. Thereafter the case was fixed for 19.04.2018. Perusal of the order-sheet would show that initially the case was before the Court of Shri H.K. Ratre, JMFC, Bilaspur and on 19.03.2018 when the date of appearance was made, it stood transferred to the Court of Smt. Chchaya Singh, JMFC, Bilaspur. The Court wherein it was transferred thereafter initially ordered for issuance of summons by ordinary and registered post and subsequently again the order-sheet was opened by noting the fact that the registered notice issued to Ram Singh and Ramesh Patil has been served, therefore, the arrest warrant was

issued.

5. The Supreme Court in the case of ***Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and another {2012 (2) CCSC 730 (SC)}*** has laid down the procedure of issuance of non-bailable warrant. The ratio as has been laid down shows that non-bailable warrant cannot be issued mechanically and the power has to be exercised judicially and not arbitrarily. In the case of ***Inder Mohan Goswami and another Vs. State of Uttaranchal and others {(2007) 12 SCC 1}*** the Supreme Court has cautioned that before issuing non-bailable warrants, the Courts should strike a balance between societal interests and personal liberty and exercise its discretion cautiously. Enumerating some of the circumstances which the Court should bear in mind while issuing non-bailable warrant, it was observed:-

"53. Non-bailable warrant should be issued to bring a person to court when summons or bailable warrants would be unlikely to have the desired result. This could be when:

- it is reasonable to believe that the person will not voluntarily appear in court; or
- the police authorities are unable to find the person to serve him with a summon; or
- it is considered that the person could harm someone if not placed into custody immediately.

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the criminal complaint or FIR has not been filed with an oblique motive.

55. In complaint cases, at the first instance, the Court should direct serving of the summons alongwith 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."

6. In this case, apparently as appears that initially the summons was served for appearance in the Court of other JMFC and one order-sheet shows that it was issued against only Ramesh Patil & another, however, subsequently, when the date was fixed for appearance on 19.03.2018, the Court which other than the Court which issued the warrant has ordered for issuance of summons by registered post, but subsequently again issued arrest warrant on the ground that earlier service was already made. Obviously the notice for the date of appearance was not before Smt. Chchaya Singh, JMFC, but it was before Shri H.K. Ratre, JMFC, Bilaspur. Therefore, it is expected that the petitioners cannot have the astrological knowledge that their case would be transferred to some other Court, wherein they have to appear. The Court while issuing the warrant prima facie appears to have acted arbitrarily and issued arrest warrant in mechanical manner though initially the summons were directed to be issued.
7. In view of this and the principles laid down supra the order dated 19.03.2018 is set aside. The petitioners shall be at liberty to appear before the Court of JMFC, Bilaspur and on the next date of hearing and may furnish the bail bond to the satisfaction of the trial Court.
8. With such observation, the petition stands disposed of.

SD/-
Goutam Bhaduri
Judge

Ashu