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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1096 OF 2017
IN
CRIMINAL APPLICATION NO.2204 OF 2010**

Subhashchandra Aminechand Bhalwal	...Applicant
Versus	
CBI, ACB, Mumbai and Anr.	...Respondents

Mr.Ganesh Gole a/w Ms.S.P.Kode, for the Applicant.

Mr.H.S.Venegaonkar, for the Respondent No.1-CBI.

Mr.H.J.Dedhia, A.P.P for the Respondent No.2-State.

CORAM : REVATI MOHITE DERE, J.

DATE : 25th JANUARY, 2018

P.C. :

1. Heard learned counsel for the parties.

2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Mr. Venegaonkar waives service on behalf of the Respondent No.1-CBI and learned APP waives service on behalf of the Respondent No.2- State.

3. By this application, the applicant has impugned the order dated 24th November, 2017, passed by the learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai, below Exhibit – 85, in C.C.No.493/PW/2015.

4. Learned Counsel for the applicant submitted that there was no justification for the learned Magistrate to pass the impugned order and to issue NBW, as against the applicant, as this Court (Coram:V.M.Kanade, J.) vide order dated 2nd August, 2010, passed in Criminal Application No.2204 of 2010 (filed by the applicant) had granted interim relief, qua the applicant i.e. had stayed the proceedings, as against the applicant in the Trial Court.

5. Learned Counsel for the Respondent No.1-CBI submits that in view of the stay, the impugned order was not justified.

6. Perused the papers. The applicant filed an application being Criminal Application No.2204 of 2010 in this Court and sought quashing of the proceedings pending before the Court of learned Special judge at Greater Bombay, arising out of FIR No.RC/BA1/2007/A0045 dated 31st

December, 2007, registered with the C.B.I., A.C.B., Mumbai, for the alleged offences punishable under Section 120-B r/w 420 of the Indian Penal Code and under Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. This Court (Coram:V.M.Kanade, J.) vide order dated 2nd August, 2010, passed in Criminal Application No.2204 of 2010, after considering the submissions of the parties, was pleased to admit the said application and was pleased to grant ad-interim relief, qua the applicant, in terms of prayer clause (d). The operative part of the said order reads as under:-

“7. Rule. Rule is made returnable after eight weeks. Respondents waive service. In the meantime, ad-interim relief is granted qua the Applicant only in terms of prayer clause (d).”

7. It appears that the said case was transferred from the Court of the Special Court to the Court of learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai, and renumbered as C.C.No.493/PW/2015. It is informed that the learned Magistrate insisted on the presence of the applicant and also issued notices to the sureties of

the applicant. Hence, the learned counsel for the applicant filed an exemption application on behalf of the applicant and sought exemption from attendance on 24th November, 2017. First and foremost, such an application was not required to be filed, as the proceedings, qua the applicant was stayed by this Court. However, it appears that because of the insistence of the learned Magistrate, the Advocate for the applicant was constrained to file the exemption application. What is shocking, is that the learned Prosecutor for the CBI opposed the said application and infact filed an application praying for issuance of NBW, which was allowed. The conduct of the learned prosecutor for the CBI of filing an application for issuance of NBW, as against the applicant, despite the proceedings having been stayed by this Court was completely unjustified and unwarranted. Infact, the learned Magistrate, seized of the case i.e. C.C.No.493/PW/2015, ought not to have allowed the said application and issued NBW, as against the applicant. The learned Magistrate ought to have noted that this Court had stayed the proceedings, qua the applicant, as the said fact was also mentioned in the application for exemption, filed by the applicant. The learned Magistrate clearly erred in law by issuing NBW, as against the applicant, in view of the stay granted by this Court to the

proceedings, qua the Applicant. Infact, when proceedings are stayed, the Trial Court cannot insist on the presence of the applicant and ask the Advocate for the applicant to file an exemption application. The said conduct of both the prosecutor filing an application seeking issuance of NBW and the learned Magistrate insisting on the presence of the applicant and insisting on the filing of the exemption application, when there is a stay to the proceedings, qua the applicant is deprecated.

8. The application is accordingly allowed. The impugned order dated 24th November, 2017, passed by the learned Additional Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai, in C.C.No.493/PW/2015, issuing NBW, as against the applicant, as well as the order rejecting the applicant's application for cancellation of warrant in C.C.No.493/PW/2015, are quashed and set aside.

9. It is made clear, that the learned Magistrate will not insist on the presence of the applicant, nor the applicant is required to file exemption application, till Criminal Application No.2204 of 2010, is decided by this Court i.e. as there is stay to the proceedings, qua the applicant.

10. Rule is made absolute in above terms.
11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.