

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.74 of 2018

ORDER

This petition under Section 482 of Cr.P.C., is filed to recall the non-bailable warrant issued on 15.11.2017 against the petitioners/A1 and A2 in C.C.No.95 of 2016 pending on the file of III Additional Judicial Magistrate of First Class, Rajahmundry.

2. The police registered a case against the petitioners and filed charge sheet for the offences punishable under Sections 420 read with Section 34 IPC and the same was registered as C.C.No.95 of 2016 pending on the file of the III Additional Judicial First Class Magistrate, Rajahmundry. The Court initially ordered issue of summons to the petitioners, but the police did not serve those summons for different reasons and thereafter, the Court ordered issue of NBWs against the petitioners.

3. The contention of petitioners before this Court is that they earlier resided at a particular address and thereafter shifted their residence and thereby summons could not be served on them. But, on enquiry, the petitioners came to know about pendency of NBWs against them.

4. It is contended by the counsel for petitioners Sri C. Masthan Naidu, that issue of warrants is a matter of serious concern, which affects the liberty of an individual and that the Court must be cautious while passing such order and he drew the attention of this Court to the judgment of the Apex Court in **Inder Mohan**

Goswami and another V. State of Uttarakhand and others¹ and on the strength of the principle laid down by the Apex Court in the said decision, he requested this Court to recall the warrants issued against the petitioners in the aforesaid C.C.

5. It appears from the record that the Court issued summons, but they were not served on the petitioners. The explanation offered by the petitioners is that they shifted their residence to some other place and therefore, the summons could not be served. Thereupon, as the police could not serve summons, the Court ordered issue of NBWs against the petitioners. The offences allegedly committed by the petitioners are punishable under Section 420 read with Section 34 IPC, which are triable under warrant procedure. Section 204(1)(b) of Cr.P.C., deals with issue of process and reads as under:

“Issue of process:-1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons; for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

But, here in this case, initially, summons were ordered against the petitioners and since those summons could not be served on them, the trial Court ordered issue of NBWs.

6. Learned counsel for petitioners while drawing the attention of this Court to paragraph Nos.51 to 55 of the judgment in **Inder**

¹ (2007) 12 SCC 1

Mohan's case, referred supra, contended that the issue of NBW seriously affects the liberty of an individual and the Court must be more cautious in ordering issue of NBW. In the above judgment, the Apex Court in paragraphs 51 to 55 held as follows:

“The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the Courts have to be extremely careful before issuing non-bailable warrants.

Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilised society. Sometimes in the larger interest of the public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.

When non-bailable warrants should be issued.

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 summons; or

.it is considered that the person could harm someone if not placed into custody immediately.

As far as possible, if the Court is of the opinion that a summons will suffice in getting the appearance of the accused in the Court, the summons 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.

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.”

In the present facts of the case, the summons were ordered long back and the case is pending before the Court since 2016. Even after a lapse of two years, the police are unable to find the person of accused to serve with the summons. In such case, by applying the guidelines laid down by the Apex Court in the above judgment, issue of NBWs is not an illegality and contravention of any of the guidelines issued by the Apex Court in the above said judgment and under Section 204(1)(b) of Cr.P.C.,

7. The petitioners are A1 and A2 in C.C.No.95 of 2016. The petitioners could have approached the trial Court by filing an application under Section 70(2) of Cr.P.C. and in stead of doing so, they approached this Court invoking the inherent jurisdiction of this Court under Section 482 of Cr.P.C. and insisting the Court to exercise inherent jurisdiction to recall the warrants, which is equivalent to the procedure under Section 70(2) of Cr.P.C.

8. In these circumstances and in view of the guidelines laid down by the Apex Court in the aforesaid judgment, I find no illegality in the order impugned warranting interference by this Court.

9. In the result, the Criminal Petition is dismissed.

10. Miscellaneous petitions, if any, pending in this criminal petition shall stand dismissed.

M. SATYANARAYANA MURTHY, J

4th January, 2018

sj

