

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.529 OF 2018

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. by the petitioners-A.5 to A.10 seeking to recall non-bailable warrants issued against them vide order dated 21.10.2017 in P.R.C. No.45 of 2017 pending on the file of the Additional Judicial Magistrate of First Class, Markapur, Prakasam District.

2. Heard both learned counsel for the petitioners, the learned Additional Public Prosecutor representing the State and perused the record.

3. Learned counsel for the petitioners would submit that the case, being a complaint case, without there being any observation by the learned Magistrate that the petitioners would abscond or avoid due process of law, issuance of non-bailable warrants against the petitioners after taking cognizance, is not permissible under law, and ultimately, prayed to recall the warrants.

4. On the other hand, the learned Additional Public Prosecutor opposed the grant of relief sought in the Criminal Petition.

5. The material on record reveals that on 11.12.2015, the Drug Inspector, Markapur lifted some samples from A.1 unit represented by A.2, which manufactures drugs, and sent the same for analysis. The samples were found to be not of standard quality. So, he filed a complaint before the learned Additional Judicial Magistrate of First Class, Markapur, who took cognizance

of the case for the offences punishable under Sections 27 (c), 27 (b) (ii), 22 (3), 27 (d) and 28 of the Drugs and Cosmetics Act, 1940, and issued non-bailable warrants against all the accused, assigning P.R.C. No.45 of 2017.

6. In this context, it is apt to extract Section 204 Cr.P.C.

“Issue of process:

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

(a) a summons-he shall issue his summons for the attendance of the accused, or

(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.

(3) In a proceeding instituted upon a complaint made in writing every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fee or other fees are payable, no process shall be issued until the fees are paid, and if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this Section shall be deemed to affect the provisions of Section 87.”

As held by the Hon'ble Apex Court in *Nupur Talwar v. Central Bureau of Investigation & another*,¹ the order issuing process may not be a reasoned one.

7. Admittedly, the instant case is a warrant case. As per Section 204 (1) (b) Cr.P.C., in a warrant case, learned Magistrate has power to issue warrant, and if he thinks fit, he can issue summons, for causing the accused to be brought or to appear, at a certain time before the said Magistrate. Had it been a summons case, the learned Magistrate has to assign reasons to issue warrant for attendance of the accused as contemplated under Section 204 (1) (a) Cr.P.C.

8. Learned counsel for the petitioners relied on a decision in *Inder Mohan Goswami & another v. State of Uttaranchal & others*² wherein it is held that the powers possessed by the High Court under Section 482 Cr.P.C. are wide and very plenitude of the power requires great caution in its exercise. It is also held that the court must be careful to see that its discretion in exercise of this power is based on sound principles. In view of the mandate given to the Magistrate under Section 204 Cr.P.C., it cannot be said that the issue of non-bailable warrants would be abuse of process of Court. Issue of warrant is within the competence of the learned Magistrate. There is no infirmity or perversity in issue of the non-bailable warrants in the present case. Therefore, it is not appropriate to invoke jurisdiction of this Court under Section 482 Cr.P.C. to recall the non-bailable warrants as prayed for. The Criminal Petition is devoid of merits and is liable to be dismissed.

¹ AIR 2012 Supreme Court 1921

² (2007) 12 Supreme Court Cases 1

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

DR.SHAMEEM AKTHER, J

DATED: 25.1.2018
DRK



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