

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1311 OF 2019

MANMOHAN GUPTA AND ANR.)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Vijay Agarwal a/w. Ashvi Agarwal i/b. Mr.Rahul Agarwal,
Advocate for the Applicants.

Mr.Chandansingh Shekhawat a/w. Mr.Amit Patil i/b. Parinam Law
Associates, Advocates for Respondent Nos.2 and 3.

Mr.Amit Palkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 10th OCTOBER 2019

P.C. :

1 By this application under Section 482 of the Code of Criminal Procedure, the applicants/accused in Criminal Case No.2020/SS/2018 filed by respondent nos.2 and 3 for offence punishable under Section 138 of the Negotiable Instruments Act

are challenging the order dated 2nd August 2018 passed by the learned trial Magistrate in issuing non-bailable warrant against the applicants/accused.

2 Heard the learned counsel appearing for the applicants/accused. He drew my attention to judgment of the Hon'ble Supreme Court in the matter of **Inder Mohan Goswami and Another vs. State of Uttaranchal and Others**¹ and particularly to paragraphs 52 and 54 thereof. With the aid of this judgment, it is directed that non-bailable warrant should be issued to bring a person to the court when summons or bailable warrants would be unlikely to have the desired result. The learned counsel placed reliance on following judgments of Delhi High Court :

- i) **Sanjay Chaturvedi vs. State**²
- ii) **Mrs.Mani Shandily and Another vs. The State and Another**³

With the aid of these judgments, it is argued that when the accused is appearing through counsel, then rejection of application for personal exemption should not warrant issuance of

1 2007 [4] JCC 2843

2 2006 [3] JCC [NI] 241

3 2008 [2] JCC 1169

bailable warrants. My attention is further drawn to Rules framed by Delhi High Court in particularly Rule No.3 which reflects that non-bailable warrant should be issued with great care and when summons could not bring out the desired result.

3 The learned counsel appearing for the respondent/original complainant argued that in the case in hand, issuance of non-bailable warrant was absolutely necessary because on previous occasion i.e. on 15th February 2019 exemption was sought. Moreover, 23 cases between the parties are pending and accused therein are trying to protract hearing of the cases. He submits that in three matters bailable warrants are issued because of absence of accused persons who are petitioners in the instant case and in four matters application for issuance of bailable warrants to them are still pending.

4 I have considered the submissions so advanced and also perused the judgments relied by the learned counsel for the applicants.

5 In the case in hand, when the subject criminal case was fixed for recording plea of the accused, the applicants/accused remained absent. Therefore, the learned counsel appearing for respondent/original complainant moved an application for issuance of bailable warrant. However, the learned trial Magistrate instead of issuing bailable warrant in pursuance to that application, was pleased to direct issuance of non-bailable warrant. Subsequently, it is seen that applications for taking the case on board for cancellation of non-bailable warrant came to be rejected with totally absurd and illogical reasons. First application came to be rejected with a reason that position of the daily board of the trial Magistrate is not permitting him for taking the case on board. The second application is rejected with a reason that because of non-availability of sufficient staff, he is not in a position to take the application on board.

6 Judgment in the matter of **Inder Mohan Goswami** (**supra**) is dealing with securing presence of the accused before the court for the first occasion. In the case in hand, presence of

the accused was secured by the learned trial Magistrate by issuing summons and therefore, this judgment is not directly applicable to the case in hand. In the other judgment cited by the learned counsel for the petitioners, it is held that it is not desirable to issue non-bailable warrant straightaway without issuing of bailable warrant to secure presence of the accused. It is held in the matter of Sanjay Chaturvedi (supra) that rejection of an application for exemption from personal appearance on any date of hearing or even at the first instance, does not amount to non-appearance despite service of summons or absconding or failure to obey summons and the court in such a case shall not issue warrant of arrest and may either give direction to the accused to appear or issue process of summons.

7 In the case in hand, inherent powers of this court under Section 482 of the Code of Criminal Procedure are invoked. Those are to be exercised sparingly in rarest of the rare cases which are found to be appropriate for exercising such powers. As stated by the learned counsel for the respondent/original

complainant, in three such cases bailable warrants are already issued against the petitioners/accused persons due to their non-appearance and in four such cases, application for issuing of bailable warrants against them are pending. It is reported that in those matters, petitioners who are accused are not appearing before the learned trial Magistrate. Therefore, I deem it fit not to exercise inherent powers in the instant case. Interest of justice could be secured with the following order ;

ORDER

- i) The application is disposed off with a direction that the applicants/accused are permitted to appear before the learned trial Magistrate with an application for taking the case on the board as well as an application for cancellation of the non-bailable warrant.
- ii) It is made clear that the learned trial Magistrate shall forthwith accept the application for taking the case on board accompanied by application for cancellation of non-bailable warrant moved as and when by the applicants/accused persons.

- iii) The learned trial Magistrate, then, shall take the case on board forthwith and shall decide the application for cancellation of non-bailable warrant in the light of law laid down by the Hon'ble Supreme Court in the matter of Inder Mohan Goswami (supra) and Sanjay Chaturvedi (supra) and particularly keeping in mind the fact that the offence alleged against the petitioners/accused persons is a bailable offence.
- iv) Absence of the original complainant or his advocate to give say and hearing shall not be the ground for non-consideration of such applications.

(A. M. BADAR, J.)