

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5134 OF 2019

RAVINDRA GANPAT SASTE)...PETITIONER

V/s.

ASIF HAROON OSMAN AND ANR.)...RESPONDENTS

Mr.Anant Vadgaonkar, Advocate for the Petitioner.

Mr.A.R.Kapadnis, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 14th OCTOBER 2019

PC. :

1 By this petition, the petitioner/accused in Criminal Case No.1538/SS/2016 for the offence punishable under Section 138 of the Negotiable Instruments Act pending on the file of the learned Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai, is challenging the order dated 27th September 2019 passed by the learned trial Magistrate, thereby rejecting his application for cancellation of warrant and proclamation.

2 Heard the learned counsel appearing for the petitioner/accused. He argued that the petitioner/accused is willing to deposit the balance amount and therefore, the non-bailable warrant issued against him needs to be cancelled. He has deposited some amount in the trial court. The learned counsel argued that in view of judgment dated 24th December 2013 passed by the learned Single Judge in Writ Petition No.4429 of 2013, the learned trial Magistrate ought not to have issued the non-bailable warrant and he should not have insisted for personal presence of the petitioner/accused for cancelling the non-bailable warrant.

3 I have considered the submissions so advanced and perused the material placed on record by the petitioner/accused.

4 The petitioner/accused is an accused in the subject criminal case. On 23rd January 2019, as he was absent, the complainant moved an application for issuance of warrant and accordingly, on 23rd January 2019, the learned trial Magistrate was pleased to issue non-bailable warrant against the

petitioner/accused. It is seen that even after issuance of the non-bailable warrant on 23rd January 2019, the petitioner/accused continued to remain absent before the learned trial Magistrate and therefore, on 3rd August 2019, the complainant in the criminal case made an application for issuance of proclamation against the petitioner/accused. Accordingly, on 3rd August 2019, the learned trial Magistrate was pleased to direct issuance of proclamation under Section 82 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C. for the sake of brevity) for securing presence of the petitioner/accused before the court. Accordingly, the proclamation dated 22nd August 2019 came to be issued by the learned trial Magistrate directing the petitioner/accused to appear before the said court on 24th September 2019. Undisputedly, the petitioner/accused did not appear before the court on that date. Wrong mentioning of the Section as Section 87 instead of Section 82 or Section 83 is of no consequence.

5 Be that as it may, ultimately, through his advocate, the petitioner/accused preferred an application on 27th September

2019 and requested for cancellation of the non-bailable warrant as well as recall of the proclamation. The learned trial Magistrate was pleased to pass the following order on this application :

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Since 29.10.2018 case is for recording statement of accused u/s. 313 & complainant closed his evidence. But due to absence of accused matter not proceeded further. Proclamation issued against accused. If warrant cancelled in absence of accused then purpose of issuing warrant will not be served. Hence rejected.”

6 Bare perusal of the impugned order goes to show that the subject criminal case which was filed way back in the year 2016 was posted for recording statement of accused under Section 313 of the Cr.P.C. Though the petitioner/accused has not placed entire record of that case for perusal, the application moved by the complainant on 23rd January 2019 goes to show that atleast on that date, the petitioner/accused was absent. His continued

absence is reflected from another application moved by the complainant on 3rd August 2019. Thus, in a case where personal presence of the petitioner/accused was required for recording the statement under Section 313 of the Cr.P.C., the petitioner/accused continued to remain absent and had taken the court for a ride. Proclamation issued could not bring the desired effect of securing appearance of the petitioner/accused before the court. In this view of the matter, no case for interference under jurisdiction of this court conferred by Article 226 of the Constitution of India as well as Section 382 of the Cr.P.C. is made out. The learned trial court has itself made it clear that the application for absence of the accused deserves to be rejected. The learned trial Magistrate has recorded that because of absence of the accused, the complaint could not proceed further.

7 So far as judgment of the learned Single Judge in the matter of **Arunkumar Chaturvedi vs. The State of Maharashtra and Anr.**¹ is concerned, it proceeded on the facts of that case with general observations. In that matter, the petitioner was ready and

1 Writ Petition No.4429 of 2013 dtd. 24th December 2013

willing to appear before the Magistrate for cancellation of warrant. It was not a case where the complaint was stalled due to absence of the accused and even statement under Section 313 of the Cr.P.C. could not be recorded. Therefore, the said ruling is not applicable to the case in hand. I see no infirmity in the impugned order and therefore the order :

ORDER

The petition is rejected. However, it is open for the petitioner to approach the learned trial court for getting the non-bailable warrant cancelled by moving an appropriate application and if such an application is moved by the petitioner, the learned trial court shall pass appropriate order thereon, keeping in mind the fact that the offence alleged against him is bailable in nature.

(A. M. BADAR, J.)