

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [APPA] No.476 of 2019

Paradise Infrastructure

vs.

Sayyad Arshad Khwaja

*Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

Court's or Judge's Orders

Shri U.A. Gosavi, Advocate for the Applicant-Appellant.

CORAM : S.M. MODAK, J.
DATE : 16th OCTOBER, 2019.

Heard the learned Advocate for the
 appellant-complainant.

The appellant-complainant adduced
 evidence before the trial Court. He was supposed to
 be cross-examined. When the respondent-accused
 failed to appear, warrant was issued against him. It
 was cancelled subject to costs of Rs.400/-. It
 happened on 11/05/2017. Thereafter, the respondent-
 accused was supposed to cross-examine the
 complainant, but he failed. He deposited the costs on
 03/01/2018.

There are directions by this Court on
 administrative side as per the letter dated 22/12/2017
 instructing the trial Court to dispose of the cases by
 using the powers under Sections 256 and 258 of the
 Criminal Procedure Code. It is referred in the
 impugned order dated 17/02/2018. Whether such
 cases fall within the purview of those directions or not,
 is an issue.

When the notice was issued to the respondent, it was received back unserved for the reason that the noticee was out of station. Thereafter, bailable warrant was also issued against him vide order dated 13/09/2019. The same could not be served as he was not available on the address at the time of service. Therefore, this application is taken up for hearing on the basis of the office endorsement on the Farad-Sheet to the effect that warrant received back after compliance. In order to verify about the same, I called the relevant papers. On reading it, I find that the office note is not correct and papers were not perused carefully while making the note.

There is a forwarding letter dated 27/09/2019 by 12th Jt. CJSD & ACJM, Nagpur addressed to the Deputy Registrar. He has annexed a copy of a forwarding letter addressed to the Police Station, Jaripatka, Nagpur, dated 24/09/2019 along with a copy of bailable warrant. If all these correspondence are perused, it cannot be said that the bailable warrant has been executed. It only suggests that it was sent to Jaripatka Police Station for execution. In fact the report of Jaripatka Police Station is still awaited. But, I do not think that there is a need to wait till the report is received. The issue of granting leave can be decided since the complainant has got good chances to succeed in the appeal.

Hence, the leave is granted to prefer an appeal. The appeal be registered. The application is allowed and disposed of accordingly.

Criminal Appeal No. _____/2019 :

Today I have only granted leave to prefer an appeal.

I am inclined to pass direction to the trial Magistrate to proceed against the accused as contemplated under Section 390 of the Criminal Procedure Code. I am inclined to direct the learned Magistrate to issue bailable warrant of Rs.25,000/- against the respondent-accused. The learned Magistrate is at liberty to release the respondent by accepting one/more surety (total amount should be Rs.25,000/-). These specific directions are issued considering the experience about avoiding service of notices issued by this Court till this date.

JUDGE

*sandesh