

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

Criminal Application (APPA) No. 625 of 2019

Dr. Pradeep Arora s/o Shri Brij Kumar
 ..Vs..
 Vijay Mankar

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

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Court's or Judge's Orders

Dr. Pradeep Arora, Applicant in person.

CORAM : S.M. MODAK, J.
DATE : 18th DECEMBER, 2019.

This is a case wherein non-bailable warrant was issued against the respondent but it could not be served as he has left from his Nagpur address. The complainant gave the mobile number of the accused to the police but they could not make any progress in the execution of non-bailable warrant.

The learned Magistrate even was pleased to issue a show cause notice to P.S.O. as per the order dated 9th August, 2017, report of the show cause notice was not received. The learned Magistrate instead of passing strict directions, directed the complainant only to take effective steps as per the order dated 15th April, 2019. Finally, the case was dismissed on 6th May, 2019 and entire blame was put on the shoulders of the complainant. This order is challenged before this Court.

Even during hearing of this appeal, the police could not serve the respondent personally but notice was accepted by his wife and daughter at Pune address. Learned Additional Public Prosecutor Ms. T.H. Udeshi was kind enough to assist the Court by giving the address of the respondent, it was filed as per Pursis Stamp No. 6179 of 2019, the address is at Pune. As the respondent has not appeared, the Court has proceeded against him and granted leave and heard the appeal finally.

Even though, it may be true that the case could not be proceeded further, the complainant/appellant cannot blame entirely. The matter was of 2015 and the case was dismissed by invoking power under Section 256 of the Code of Criminal Procedure *vide* order dated 6th May, 2019. The learned Magistrate was fully conscious of the fact that the police have not executed non-bailable warrant even the learned Magistrate has issued a show cause notice. If the learned Magistrate is fully conscious of these facts, exercise of power under Section 256 of the Code of Criminal Procedure cannot said to be justified. The learned Magistrate ought to have given further directions including service of non-bailable warrant through Commissioner of Police.

The litigant who is coming to Court for seeking justice cannot be thrown out of the Court for fault of the police

in executing non-bailable warrant. Hence the order needs to be set aside. Hence the following order is passed:-

ORDER

- I. The appeal is allowed.
- II. The order dated 6th May, 2019 passed by 19th Jt. C.J.J.D. & J.M.F.C. in Summary Criminal Case No. 324170 of 2005 is set aside.
- III. The complaint is restored back and the complainant is directed to appear before the learned Magistrate on 3rd January, 2020.
- IV. The complainant is at liberty to pray for issuing fresh Pursis against the respondent-accused.
- V. The learned Magistrate is at liberty to issue coercive process of bailable or non-bailable warrant against the accused.
- VI. The complainant can amend the complaint by giving fresh address of the respondent at Pune.
- VII. The application is disposed of.

JUDGE