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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : May 01, 2019

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W.P.(CRL) 1266/2019

RITU JAIN

..... Petitioner

Represented by: Ms.Anjal J.Manish, Advocate

versus

STATE & ANR.

..... Respondents

Represented by: Mr.R.S.Kundu, ASC for the State

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CrI.M.A.No.9323/2019

Allowed subject to just exceptions.

W.P.(CrI.) No.1266/2019 & CrI.M.A.No.9322/2019

1. By this petition, the petitioner challenges the order dated 10th April, 2019 passed by the learned Metropolitan Magistrate which reads as under:-

*“CC No.530222/2016
Deepak Jain Vs. Shrey Overseas & Ors.*

10.4.2019

*Present : Complainant in person.
Accused is absent.
Sh.Ritaj, counsel for the accused.*

*Counsel for the accused has filed copy of receipt
of cost deposited by them in Delhi High Court Legal*

Services Committee in compliance of the order dated 12.03.2019 of Hon'ble High Court of Delhi in a petition filed by them titled as Ritu Jain Vs. State.

Copy of the receipt be taken on record.

Reserve for orders till 2:00 PM.

*Sd/
(Arjinder Kaur)
M.M.-01 (N.I.Act)/Central,
THC/Delhi/10.4.2019*

At 12:00 noon.

*Present: None for the complainant.
Proxy Counsel for the accused.*

Proxy Counsel for the accused appears before the Court and files a copy of the order of the Hon'ble High Court of Delhi dated 10.12.2015 made in petition titled as Ritu Jain Vs. State through standing counsel (CRL.M.C.5004/2015 & Crl.M.A.No.18006/2015).

The counsel submits that vide this order, Single Bench of Hon'ble High Court of Delhi cancelled the NBWs issued against the accused on 30.11.2015 by this Court.

*Sd/
(Arjinder Kaur)
M.M.-01 (N.I.Act)/Central,
THC/Delhi/10.4.2019*

At 2:00 PM.

Perusal of the records show that the case was filed way back in 2015. Summons were issued to the accused on

19.05.2015 which were received back with remarks 'refusal'. After that B/W were issued against the accused on 13.08.2015. Despite that accused never appeared in the Court. Consequently vide order dated 30.11.2015, NBWs were issued against the accused. The said order was challenged by the accused in Hon'ble High Court of Delhi. The Hon'ble High Court of Delhi vide order dated 10.12.2015 in the above named petition ordered as follows:-

“After hearing counsel appearing on behalf of both the sides, the present petition is disposed of with the direction that in pursuance of the order dated 30.11.2015, passed by the Trial Court, the petitioner be not arrested in this case till the NDOH fixed before the Court below and after deposit of costs of ₹5,000/- the petitioner shall seek fresh bail from the Court below.”

Perusal of the records shows that accused never appeared before this Court to furnish bail in compliance of the above said order of the Hon'ble High Court of Delhi.

Ld.Proxy Counsel for the accused submits that by virtue of this order of Hon'ble High Court of Delhi, the NBWs issued vide order dated 30.11.2015 stood cancelled. However, this Court is unable to reach any such conclusion after reading this order.

In 2016, accused filed another petition (CRL.M.C. 555/2016 & Crl.M.A.2315/2016) in the Hon'ble High Court of Delhi for quashing the criminal complaint No.1047/2015 i.e. complaint in the present case. The said petition was disposed off by the Hon'ble High Court of Delhi vide order dated 12.03.2019, the true copy of which is part of record. Vide said order, the Hon'ble High Court of Delhi dismissed the petition of the accused and imposed a cost of ₹50,000/- and categorically referred to the petition as “an abuse of the process of law”. The Hon'ble High Court of Delhi also observed in detail the conduct of the accused throughout the

proceedings and observed in para 16 of the order that “the petitioner has been successful in evading the process before the criminal court over the last four years.”

Therefore, NBWs be issued against the accused through SHO concerned, returnable on 04.09.2019.

*Sd/
(Arjinder Kaur)
M.M.-01 (N.I.Act)/Central,
THC/Delhi/10.4.2019”*

2. Brief background of the case is that summons were issued against the petitioner in Criminal Complaint being CC No.1047/2015 titled as Deepak Jain HUF Vs. M/s.Shrey Overseas & Ors. vide order dated 19th May, 2015 for an offence punishable under Section 25 read with Section 27 of the Payment and Settlement Systems Act, 2007 (in short the Act). Pursuant to the summons when the petitioner did not appear, bailable warrants were issued returnable on 13th August, 2015. The petitioner did not appear in the Court on that day, thus the learned Trial Court issued non-bailable warrants against the petitioner vide order dated 30th November, 2015.

3. The petitioner filed a petition before this Court being CrI.M.C.No.5004/2015 challenging the order dated 30th November, 2015 issuing non-bailable warrants and imposing the cost of ₹5,000/-. The said petition was disposed of by this Court on 10th December, 2015 with the direction that the petitioner be not arrested in this case till the next date of hearing before the Court below and after deposit of cost of ₹5,000/- the petitioner shall seek fresh bail before the Court below. The petitioner

appeared before the Court below on the next date of hearing which was 1st February, 2016 when the learned Presiding Officer was on leave and thereafter on 17th March, 2016 when again it is stated that the Presiding Officer was on leave.

4. In the meantime, petitioner filed CrI.M.C.No.555/2016 seeking quashing of the complaint in which vide order dated 9th February, 2016 this Court while issuing notice stayed the proceedings in the complaint case till the next date of hearing which was 18th May, 2016. The said interim order continued and CrI.M.C.No.555/2016 were finally dismissed by this Court on 12th March, 2019. While dismissing CrI.M.C.No.555/2016, this Court imposed a cost of ₹50,000/- to be deposited with the Delhi High Court Legal Services Committee within a week and if the same was not deposited, directions were issued to the learned Metropolitan Magistrate to recover the amount as if it was fine imposed on the petitioner.

5. Case of the petitioner is that the order dated 12th March, 2019 was uploaded only on 1st April, 2019 and then he got to know of the order. The next date before the learned Trial Court in Complaint Case was 2nd April, 2019 when the complainant was present in person and proxy counsel for the accused was present. Proxy counsel for the accused i.e. the petitioner herein placed on record the order dated 12th March, 2019. Since copy of the order was not received officially by the Court, the learned Trial Court called for the verification of the order from the Incharge General Branch which was verified and the report was tagged with the complaint. The petitioner was thus directed to show the receipt of cost deposited in compliance of the order dated 12th March, 2019. Report was also called from the concerned Branch where cost had been deposited and the matter was put up for production of

the receipt on 10th April, 2019. On 10th April, 2019 the petitioner did not appear and counsel for the petitioner deposited the copy of the receipt of the cost deposited in the Delhi High Court Legal Services Committee in compliance of the order dated 12th March, 2019 which was taken on record. At request the matter was heard and reserved for orders for 2:00 PM and in the meantime at 12:00 noon learned proxy counsel for the petitioner filed a copy of the order dated 10th December, 2015 in Crl.M.C.No.5004/2015 on the ground that the non-bailable warrants issued against the petitioner were cancelled by this Court. Thus at 2:00 PM the learned Metropolitan Magistrate passed the order as noted above.

6. From the order dated 10th December, 2015, passed in Crl.M.C. No. 5004/2015 it was evident that directions were issued not to arrest the petitioner till the next date of hearing fixed before the learned Trial Court when the petitioner was to appear before the Court, deposit the cost of ₹5,000/- and seek bail. No doubt on two dates the petitioner did appear and the Presiding Officer was on leave whereafter the proceedings before the learned Trial Court was stayed in Crl.M.C. No.555/2016, however on dismissal of Crl.M.C.No.555/2016 on 12th March, 2019, the order dated 10th December, 2015 passed in Crl.M.C. No. 5004/2015 stood applicable and the petitioner was required to appear before the Court and seek bail. As noted above, neither on 2nd April, 2019 nor on 10th April, 2019 the petitioner appeared before the Court.

7. Learned counsel for the petitioner challenges the finding of the learned Trial Court that it was unable to reach to the conclusion that the non-bailable warrants issued against the petitioner had been cancelled vide order dated 30th November, 2015. As noted above, this Court while disposing of

CrI.M.C.No.5004/2015 did not cancel the non-bailable warrants but kept them in abeyance subject to the petitioner appearing before the Court, seeking the bail and depositing the cost. Though the petitioner appeared on two dates but neither the cost was deposited nor bail was taken since the learned Trial Court was on leave. On dismissal of CrI.M.C.No.555/2016 the order dated 10th December, 2015 passed by this Court in CrI.M.C.No.5004/2015 automatically revived and thus the petitioner was required to appear before the Court, seek bail and deposit the cost. Hence, this Court finds that the petitioner having not appeared before the learned Trial Court on two consecutive dates purportedly on the ground that the matter was only listed for producing the receipt, the learned Trial Court was justified in issuing non-bailable warrants.

8. Learned counsel for the petitioner states that the petitioner has filed a Special Leave Petition against the judgment of this Court dated 12th March, 2019 and the same was one of reasons for the petitioner's non-appearance before the learned Trial Court. The Special Leave Petition has not been listed as yet much less any stay being granted by the Hon'ble Supreme Court. Though in the order dated 10th April, 2019 the learned Trial Court has issued the non-bailable warrants returnable for 4th September, 2019 a perusal of the order sheets as filed by the petitioner reveals that on 23rd July, 2018 the complaint case was listed for 9th May, 2019 in deference of the orders passed by this Court in CrI.M.C.No.555/2016 wherein the interim order staying the proceedings before the learned Trial Court were continued till the next date of hearing.

9. Considering the fact that the petitioner did not appear before the learned Trial Court on the purported advice of the counsel that the matter

was listed only for showing the receipts, this Court deems it fit to grant one opportunity to the petitioner to appear before the Court and seek bail on 9th May, 2019. The petitioner will not be arrested till 9th May, 2019 on which date the petitioner will appear before the learned Trial Court and seek bail subject to any stay granted by the Hon'ble Supreme Court in the SLP and also in case the Presiding Officer/Magistrate/Link Magistrate is on leave, the petitioner will appear before the Court on the next date of hearing fixed and seek bail. It is clarified that this order does not cancel the non-bailable warrants issued against the petitioner but grants one opportunity to the petitioner to rectify the mistake committed by not appearing before the Court and seeking bail pursuant to the order this Court in CrI.M.C.No.5004/2015 dated 10th December, 2015 subject to further cost of ₹20,000/- to be paid to the private respondent before the learned Trial Court.

10. Petition and application are disposed of.

11. Order dasti.

(MUKTA GUPTA)
JUDGE

MAY 01, 2019

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