

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Crl.M.C.No. 1618/2019 & Crl.M.A.6478/2019**

Judgment reserved on : 11.02.2020

Date of decision : 13.02.2020

INSP RAM NIWAS Petitioner
Through: Mr. Ajayinder Sangwan, Adv.
versus

GOVT. OF NCT OF DELHI Respondents
Through: Mr. Kamal Kumar Ghei, APP
for State with SI Ranjit Singh,
PS Roop Nagar

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner vide the present petition assails the impugned order dated 15.03.2019 of the Ld. Special Judge (PC Act) (CBI)-04, Central District Tis Hazari Courts, Delhi in Criminal Revision No.122/2019 vide which it was held that there was no infirmity nor illegality in the order dated 19.02.2019 of the Ld. Trial Court of the MM-04 (NI Act), Central, Tis Hazari Court, warranting any interference which order of the Ld. Trial Court was upheld, though the order dated 19.02.2019 of the Ld. Trial Court in CC No.536918/16 to the extent that it allowed the application of the petitioner herein seeking cancellation of non-bailable warrants against him subject to costs of Rs.10,000/- to be deducted by the concerned DCP/ Joint CP having administrative control over the petitioner herein in his present

posting with a copy of the said order having been sent to the concerned DCP/ Joint CP with direction to deduct the said cost of Rs.10,000/- from the salary of the petitioner who had flouted the court order and the provisions of the Delhi Police Act, was modified by the Revisional Court vide the impugned order dated 15.03.2019 observing to the effect that the revisionist i.e. the petitioner herein be given a chance to deposit the cost from his own pocket instead of directing the DCP/Joint CP to deduct the same from the salary of the petitioner herein to avoid any adverse impact on his future career prospects and the petitioner herein as the revisionist before the Revisional Court was directed to deposit the costs imposed by the Ld. Trial Court within two weeks from the date 15.03.2019, failing which the DCP/ Joint CP was directed to deduct the costs from the salary of the petitioner and to deposit the same in the Ld. Trial Court. The said costs of Rs.10,000/- are indicated to have been deposited by the petitioner before the Ld. Trial Court vide receipt dated 29.03.2019 in compliance of the directions dated 15.03.2019 of the Revisional Court in CR No.122/2019.

2. The copies of the proceedings in CC No.536918/16 dated 27.11.2017, 23.03.2018, 01.06.2018, 30.06.2018, 29.08.2018 and 05.01.2019 and 19.02.2019 which are to the effect:-

*CC No. 536918/16
27.11.2017*

*Today I am also looking after the work of 3rd Ld. Link M.M.
Case received by way of transfer. It be checked and registered.*

*Present: Complainant alongwith Ld. Counsel Ms. Vioma Gaur.
NBWs returned unexecuted only on one address pertaining to*

Sangam Vihar Ghaziabad and no report received regarding the address at Subhash Vihar Delhi. However, the complainant submits that the accused is residing at this address and the report is Collusive. Separate copy of the order be provided to the complainant with direction to the concerned SHO to get the NBWs executed with the help of the complainant who will point out the address and the report is returnable for 23.03,2018 at the address Dabar, Sangam Vihar. Also issue W/attachment of surety for date fixed. PF be filed.

*Sd/-
MM-04 (NI Act) Central, Delhi
27.11.2017*

*CC No. 536918/16
23.03.2018*

*Ld. PO is on leave today.
Present: Complainant in person
Put up for purpose fixed on 01.06.2018.*

*Sd/-
Link MM, Central, THC, Delhi
23.03.2018*

*CC No. 536918/16
01.06.2018*

Present: Complainant in person with Counsel.

On 27.11.2017 order was made for arrest of accused on pointing the identity by the complainant. However, Ld. Counsel submits that though the complainant approached the SHO with the copy of the order but assistance was not given.

Issue show cause notice to the SHO to PS Roop Nagar to appear personally as to why action should not be recommended as well as judicial action be also not taken for non compliance of the court order.

List on 30.06.2018. Separate copy of the order be sent to the SHO for his intimation and compliance.

*Sd/-
MM.04 (NI Act) Central, THC, Delhi
01.06.2018*

*CC NO. 536918/16
Abdul Khalik Vs. Mohammad Anwar
30.06.2018*

*Regular stenographer is on leave today.
Present: Complainant alongwith Ld. Counsel.*

Sh. Rajender Kumar, Inspector (Incharge) at present, PS Roop Nagar, and otherwise, deputed as ATO.

Today, the mobile number of accused has been handed over to Sh. Rajender Kumar for tracing out the address of the accused and to execute the NBWs. The ATO is not aware whether they have the copy of NBWs and he can collect the fresh NBWs.

The report on the NBWs is to be filed on the next date.

The complainant submits that he visited the PS around about to 10-11. 02. 2018 with the copy of the order requiring the concerned SHO to execute the NBWs against the accused on pointing out by the complainant, but the SHO Sh. Ram Niwas was not at that time available, or he did not meet the complainant.

Show cause notice was issued to the SHO who is not present, despite the receipt of the notice. Issue bailable warrant against Sh_ Ram Niwas, the then SHO at that time to be executed through the concerned ACP, returnable for 29.08.2018.

Separate copy of the order be provided to Sh. Rajender Kumar for compliance on the next date. He is also directed to collect the separate copy of court notice alongwith copy of this order for intimation and compliance of inspector Sh. Ram Niwas.

Also issue notice u/s 446 Cr.P.C against the surety.

Sd/-

MM-04 (NI ACT) CENTRAL, THC, DELHI

30.06.2018

CC No. 536918/16

29.08.2018

Present: Complainant in person.

Insp. Ram Niwas Former SHO, Roop Nagar PS.

The Inspector was called on the BW as he neither received the court process for execution nor showed any intent for the same. He admits that he received the notice to appear on the last but could not appear as he was not well. He was duty bound to send exemption request but he did not do so. He is warned to be careful in future. However, he is directed to coordinate efforts in conjunction with the present SHO of the area where the accused resides on pointing out of the complainant and separate copy of the order be provided to Insp. Ram Niwas for compliance on the next date of 5.01.2019.

Sd/-

MM-04 (NI Act) Central, THC, Delhi

29.08.2018

CCNo. 536918/16
05.01.2019

Today I am also doing the work of Link court.

Present: Ld. Counsel for the complainant.

On the last date of hearing Insp. Ram Niwas appeared who is the former SHO, Roop Nagar, and was the SHO and directions were issued for tracing out the address of the accused and then to execute the NBWs. The NBWs were issued against the accused on 19.7.2017 which continued in force with the repeated orders on 27.11.2017, 23.3.2018, 1.6.2018, 30.6.2018 and 5.1.2019 but till date even reports are not being sent regarding the fate of coercive process. In these circumstances, separate copy of the order be sent to the concerned Joint CP under whom the said Inspector is functioning and the separate copy of the order be sent along with court notice to be executed through SHO, Roop Nagar and a separate NBW be issued not only against the accused but also Insp. Ram Niwas who appeared on last date on issuance of BW but again failed to appear and to furnish the report despite strict directions. The NBWs against Insp. Ram Niwas as well as the accused are returnable for 06.03.2019.

However, separate report that the orders have been received by the Joint CP for information and compliance be sent to the court for 18.01.2019.

*Sd/-
MM.04 (NI Act) Central, THC, Delhi
05.01.2019*

CC No.536918/16
19.02.2019

One of regular PS/Stenographer is on leave for one month.

File taken up today on the application for cancellation of NBW moved on behalf of applicant Insp. Ram Niwas. NDOH is 06.03.2019.

Present: Applicant Insp. Ram Niwas in person with counsel.

The application for cancellation of NBWs has been filed by Insp./Ex. SHO P.S. Roop Nagar, Sh. Ram Niwas on the ground that on 05.01.2019, NBWs were directed to be issued against the applicant. However, the applicant could not appear before the Court because he is deputed on the personal security of the Vice President of India and could get leave from the deputation and hence, NBWs be cancelled against him. However, the said applicant has not filed any supporting documents in this regard that on the ground of compliance of the court order, he applied leave and the same was rejected. The present situation shows the predicament of the court and the

difficulty it faces because of the non cooperative attitude of the law enforcing agency which attitude many times tantamount to utter contempt and disregard of the court process. Because of such law enforcers like the applicant, lot of valuable time of the court is wasted not just to secure the presence of the accused but also to coerce the law enforcers themselves to execute the coercive process against the accused. **The record shows that on 27.11.2017 the court directed the concerned SHO to cooperate with the complainant in arresting the accused on pointing out by the complainant because it appeared that there was collusion between the Process Server and the accused in failure to execute the NBWs. Thereafter, the complainant pointed out on 01.06.2018 that though he approached the Ex.SHO/ applicant with the court order but no assistance was given and thereafter show cause notice was issued against the SHO returnable for 30.06.2018 and when despite receipt of the show cause notice, the applicant failed to appear, bailable warrants were issued against him returnable for 29.08.2018. Thereafter, the applicant appeared on 29.08.2018 and admitted that he received the notice to appear but could not appear and the court adopting a lenient attitude, again interested him to comply with the court order for execution of NBW returnable for 05.01.2019 but again on 05.01.2019 neither the applicant appeared with the reasons for non execution of NBW nor the NBWs were execution and thereafter NBWs were directed to be issued against the applicant himself. Thus even the fate of NBW against the accused has a chequered history. The conduct of the applicant is utterly contemptuous and shows a non chalant attitude towards the court and court proceedings. However, the applicant undertakes to be careful in future and requests that the application be allowed since sending him to JC will have severe consequences for his government service. Keeping in mind the undertaking of the applicant the court refrains from sending him to JC but the application is allowed subject to cost of Rs.10000/- to be deducted by the concerned DCP/Joint CP having administrative control over the applicant in the present posting. Separate copy of the order be sent to the concerned DCP/Joint CP with direction to deduct to said cost of Rs.10000 from the salary of the applicant who has flouted the court order and Delhi Police Act provisions. List for the next date of 06.03.2019 which is the date already fixed for further proceeding and compliance by the concerned DCP/Joint CP.**

sd/-

MM.04 (NI Act) Central, THC, Delhi/ 19.02.2019,
(Emphasis Supplied),

speak eloquently of the disregard of the petitioner herein, the former SHO, PS Roop Nagar to the directions of the Ld. Trial Court in CC No.536918/16 to get the non-bailable warrants in the said complaint case executed against the accused stated to be residing at Subhash Vihar, Delhi, with a direction to the concerned SHO who then was the petitioner as directed vide order dated 27.11.2017 to get the non-bailable warrants executed with the help of the complainant who was to point out the address with the report being returnable for 23.03.2018 at the address at Dabar Sangam Vihar.

3. This is so in as much as the matter having been adjourned from 23.03.2018 to 01.06.2018 as the Ld. Presiding Officer of the Ld. Trial Court was on leave, on 01.06.2018 it was submitted by the complainant that though he had approached the SHO with the copy of the order dated 27.11.2017 which was for the arrest of the accused on the pointing out of the identity by the complainant, no assistance was provided to him, as a consequence of which, a show cause notice was issued to the SHO, PS Roop Nagar to appear personally as to why action should not be recommended as well as judicial action be also not taken against him for non-compliance of the Court order, returnable for 30.06.2018.

4. On 30.06.2018, Inspector Rajinder Kumar, the then Incharge of PS Roop Nagar put in appearance and was handed over the mobile number of the accused for tracing out the address of the accused and to execute the non-bailable warrants. A submission was made by the complainant on 30.06.2018 before the Ld. Trial Court that he had visited the police station around 10-11.02.2018 with the copy of the

order requiring the concerned SHO to execute the non-bailable warrants against the accused on pointing out by the complainant, but the SHO i.e. the present petitioner was not available at that time nor did he meet the complainant.

5. The proceedings dated 30.06.2018 of the Ld. Trial Court reflect that the show cause notice had been issued to the SHO i.e. an apparent reference to the SHO previously posted at PS Roop Nagar as he was not present despite receipt of the notice and thus bailable warrants were ordered against him to be executed through the concerned ACP, returnable for 29.08.2018. The then Incharge of the PS Roop Nagar, Inspector Rajender Kumar was also directed vide order dated 30.06.2018 to collect a separate copy of the court notice along with a copy of the order dated 30.06.2018 for intimation and compliance by the present petitioner with the matter having been renotified for 29.08.2018.

6. On 29.08.2018, the proceedings of the Ld. Trial Court reflect to the effect that the petitioner put in appearance and admitted that he had received the notice to appear on the last date of hearing i.e. 30.06.2018 but he could not appear as he was not well. The Ld. Trial Court vide the order dated 29.08.2018 observed to the effect that the petitioner was duty bound to send his exemption request but has not done so and was thus warned to be careful in future. The petitioner, however, submits that he is aggrieved by the further directions in the order dated 29.08.2018 that the petitioner herein was directed to coordinate efforts in conjunction with the then SHO of the area where the accused resides on the pointing out of the complainant and a

separate copy of the order was provided to the present petitioner for compliance on the next date i.e. 05.01.2019.

7. The petitioner submits that in as much as he had been transferred from PS Roop Nagar on 07.05.2018, on deputation to New Delhi vide Form No.22-48 (1) and had handed over the charge of the SHO Roop Nagar to Inspector Deepak Kumar vide order No.22071-22170/CB-I PHQ dated Delhi 28.04.18 by self, the directions issued to him on 29.08.2018 to coordinate efforts in conjunction with the then SHO of the area where the accused resides on pointing out of the complainant, were not in adherence to the law and thus vide the consequential order dated 05.01.2019 qua the petitioner who failed to appear on 05.01.2019, non-bailable warrants were ordered against him, returnable for 06.03.2019 with it having been observed to the effect that the report qua the fate of the non-bailable warrants issued against the accused on 09.07.2017, 27.11.2017, 23.03.2018, 01.06.2018, 30.06.2018 and 05.01.2019 had not been sent and thus the Ld. Trial Court directed that a copy of the order be sent to the concerned Joint CP under whom the petitioner was functioning with a separate copy of the order being sent along with the Court notice to be executed through the SHO Roop Nagar apart from separate non-bailable warrants against the petitioner who failed to appear on the date preceding the date 05.01.2019 i.e. 21.09.2018 and thus the non-bailable warrants were ordered against the petitioner vide the order dated 06.03.2019 and it has been submitted on behalf of the petitioner that the Ld. Trial Court could not have passed any such order as of the date 05.01.2019 nor the consequential order dated 18.01.2019.

8. A perusal of the record of the present petition brings forth clearly that the petitioner herein chose not to put in appearance before the Ld. Trial Court on the date 05.01.2019 and did not appear even on the date 18.01.2019 with it having been reported for the date of hearing 18.01.2019 by the Joint CP, Security Shri I.D.Shukla under whose control he was working that the petitioner had gone outstation on a tour with the Vice President of India. The Ld. Trial Court called for the report on the non-bailable warrants against the petitioner and the report regarding the execution of the process against the accused having been called for further on 06.03.2019.

9. The petitioner further put in appearance before the Ld. Trial Court on 09.02.2019 seeking the cancellation of non-bailable warrants against him submitting to the effect that he was deputed on the personal security of the Vice President of India and could not get leave from deputation for the date of hearing 05.01.2019 and thus non-bailable warrants against him be cancelled. The Ld. Trial Court observed categorically to the effect that the petitioner had not filed any supporting documents in this regard to indicate that for the compliance of the Court order he applied for but the same was rejected. In reply to a specific court query put during the proceedings of the present petition CrI.M.C.1618/2019, also in relation to any such documents to indicate the reasons for the absence of the petitioner on 05.01.2019 before the Ld. Trial Court, no such documents were put forth on behalf of the petitioner and what was sought to be contended was that the directions dated 29.08.2018 could not have been issued to the petitioner whereby the petitioner had been directed to coordinate

efforts in conjunction with the then SHO of the area with the accused resided on the pointing out of the complainant in as much as the petitioner had already been transferred on 07.05.2018 from PS Roop Nagar where he was earlier posted as the SHO. It has been submitted on behalf of the petitioner that the directions that had been issued to the petitioner were in a complaint case and not even in relation to any State case. It was further submitted on behalf of the petitioner that there are catena of verdicts of this Court and the Hon'ble Supreme Court that persons in official authorities ought not to be summoned to the Court unnecessarily.

10. The order of the Ld. Revisional Court vide paragraph 8 of the Revisional Court observes to the effect.

'A bare perusal of the Ld. Trial Court record would show that the revisionist was admittedly SHO PS Roop Nagar when the Ld. Trial Court passed the order dated 27.11.2017 directing execution of NBWs through SHO PS Roop Nagar. On 23.03.2018 Ld. Presiding Officer was on leave and the matter was listed for 01.06.2018. On 01.06.2018 the revisionist did not appear before the Court and show cause notice was issued to him as he failed to comply with judicial order dated 27.11.2017. On 30.06.2018 revisionist did not appear before the court and show cause notice again was issued to the SHO and B/Ws were issued to the revisionist for non-compliance of the orders. At this juncture, it is pertinent to mention that even though revisionist had been transferred from the post of SHO, PS Roop Nagar but since Ld. Trial Court had directed the revisionist to provide assistance for the execution of NBWs against the accused, it was the duty of the revisionist to have

informed the court about the steps taken by him in this regard. Even if, for the sake of arguments, it is assumed that the complainant had not approached the revisionist, the revisionist could have informed the court about this fact as well. However, the revisionist failed to appear on 30.06.2018 and as such B/Ws were issued against him for 29.08.2018. On 29.08.2018 when the revisionist appeared before the court, he admitted that he received the notice to appear but he could not appear as he was not well. However, he failed to give any explanation as to why he did not send any request seeking his exemption. Thereafter, once again the revisionist was provided with the separate copy of the order and he was directed to coordinate efforts in conjunction with the then SHO of the area for execution of the NBWs for 05.01.2019. However, on 05.01.2019 revisionist neither appeared before the Court nor filed any report nor sought any exemption for his non-appearance. This shows the callous and negligent approach of the revisionist towards the orders passed by the Id. Trial Court. Hence, the arguments of the Ld. Counsel for revisionist that revisionist remained absent only on one day falsified from the record and Ld. Trial Court had no other option but to issue NBWs against him. On the application filed by the revisionist for cancellation of NBWs, Ld. Trial Court vide its impugned order dated 19.02.2019 has cancelled the NBWs subject to cost of Rs.10,000/- and has directed the cost to be deducted from the salary of the revisionist.”

(emphasis supplied)

As observed hereinabove, the record speaks eloquently of the disregard to the directions of the Ld. Trial Court by the petitioner herein repeatedly for the date of hearing 27.11.2017 and 30.06.2018 as

well as non compliance of the order dated 29.08.2018 with the absence of the petitioner on 05.01.2019 before the Ld. Trial Court without any proof of his inability to put in appearance before the Ld. Trial Court on 05.01.2019 with the petitioner herein having also not chosen to seek any exemption from appearance on 05.01.2019 before the Ld. Trial Court.

11. As rightly observed by the Ld. Revisional Court despite the transfer of the petitioner from the post of the SHO PS Roop Nagar in as much as the Ld. Trial Court had directed the petitioner to provide assistance for the execution of the non-bailable warrants against the accused, it was the duty of the petitioner to have informed the Ld. Trial Court of the steps taken by him in this regard.
12. In these circumstances, there is no infirmity whatsoever in the impugned order of the Ld. Revisional Court dated 15.03.2019 which has upheld the order dated 19.02.2019 of the Ld. Trial Court in CC No.536918/16.
13. It is essential to observe that the Ld. Revisional Court has taken into account the aspect of the future career prospects of the petitioner herein and has modified the conditions imposed on the petitioner vide the order dated 19.02.2019 of the Ld. Trial Court for the deposit of costs of Rs.10,000/- for the cancellation of the non-bailable warrants against the petitioner through the salary of the petitioner which had directed that the said costs be deducted by the DCP/ Joint CP, with the modification being made to the effect that the same could be deposited by the petitioner of his own within a

period of 2 weeks from the date of the order of the Ld. Revisional Court dated 15.03.2019 which was so adhered to by the petitioner.

14. In the circumstances, there is no reason whatsoever to grant the prayer made by the petitioner seeking the setting aside of the order dated 15.03.2019 of the Ld. Revisional Court in Criminal Revision No.122/2019 which is thus dismissed.

ANU MALHOTRA, J.

FEBRUARY 13th, 2020/sg

