

HIGH COURT OF CHHATTISGARH AT BILASPUR**CRMP No. 411 of 2021**

Sushama Rawat, W/o Mahadev Nagesh, Aged about 35 years, R/o R.D.A. Colony, Block No. 2/224, Mana Police Station Mana District, Raipur, Chhattisgarh.

--Petitioner/Accused

Versus

1. Lalsingh Parmar, S/o Sakhan Singh Parmar, Aged about 63 years, R/o MIG G/10, Sector 1, Devendra Nagar, P.S. Devendra Nagar, Distt. Raipur, Chhattisgarh.

--- Complainant

2. State of Chhattisgarh, Through District Magistrate, Raipur, Distt. Raipur, Chhattisgarh.

--- Respondents

For Petitioner :- Mr. C.R. Sahu, Advocate

For State :- Mr. Animesh Tiwari, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

06/04/2021

1. Petitioner is an accused standing trial for offence punishable under Section 138 of the Negotiable Instruments Act, 1881. On 31/01/2020, she could not appear before the trial Court and thus, filed an application under Section 205 of CrPC for exemption from personal appearance which was kept pending and straightway non-bailable

warrant of arrest was issued against the petitioner which was questioned by her by way of revision, but learned revisional Court did not interfere with the order of the trial Court and moreover, confirmed the said order by further imposing cost of Rs. 5,000/- upon the petitioner, which has been challenged by her in the present petition.

2. Mr. C.R. Sahu, learned counsel for the petitioner, would submit that though the application under 317 of CrPC was also filed by the petitioner along with the application under Section 205 of CrPC, but if it was not filed, the trial Court could have given an opportunity to the petitioner to file the said application. Learned revisional Court also did not look into the matter and even confirmed the order of the trial Court for issuance of non-bailable warrant of arrest against the petitioner by imposing a cost of Rs. 5,000/- against her, as such, the instant petition be allowed and the orders passed by the trial Court as well as the revisional Court be set aside.

3. I have heard learned counsel for the petitioner at length and perused the records.

4. Though the case is at admission stage and notices have not been issued to the respondent No.

2/complainant, but the matter is being disposed of in the interest of justice. Admittedly, on 31/01/2020, petitioner could not appear before the trial Court and she moved an application under Section 205 of CrPC. Learned trial Magistrate kept the said application pending and recorded a finding that application under Section 317 of CrPC has not been filed by the petitioner and straightway issued non-bailable warrant of arrest against her. It is the opinion of the trial Magistrate that application under Section 317 of CrPC should have been filed by the petitioner, as such, on that day, he could have directed petitioner's counsel to file the application and could have considered petitioner's prayer as the object of the Court should be to consider the grievance of the petitioner and dispose of the matter.

5. Learned trial Court, instead of granting an opportunity and directing the petitioner to file application under Section 317 of CrPC, straightway issued non-bailable warrant of arrest against her which was totally uncalled for and the revisional Court further did not consider the matter in its proper perspective and simply held that since petitioner's application under Section 205 of CrPC

is pending before the trial Court, therefore, it cannot be considered by the revisional Court and dismissed the revision, but further imposed a cost of Rs. 5,000/- against the petitioner which is also bad in law. As such, the order dated 31/01/2020 passed by the trial Court as well as the order dated 05/02/2021 passed by the revisional Court are hereby set aside and the non-bailable warrant of arrest issued against the petitioner is recalled immediately. Now, petitioner will appear before the trial Court on the next date as given by that Court and the trial Court would do well to consider petitioner's application under Section 205 of CrPC in accordance with law.

6. With the aforesaid observation, the instant petition stands disposed of. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

Harneet