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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.819 OF 2019

Ashok Lalchand Goyal Petitioner

Vs.

The State of Maharashtra & Ors. Respondents

Mr. Mukesh J. Pabari for the Petitioner

Mr.J.P.Yagnik, A.P.P. for the State

CORAM: SURENDRA P. TAVADE, J.

DATED : FEBRUARY 22, 2022

P.C.

1. Heard.
2. Rule. Rule made returnable forthwith.
3. By consent of both the parties, matter is taken up for hearing.
4. The petitioner has filed this petition to challenge the order passed by Additional Chief Metropolitan Magistrate on Exhibit 21 in C.C.No.134/SW/2011. The petitioner has filed criminal complaint against the respondents for the offences punishable under section 477A, 420, 409 read with section 120B and 34 of the Indian Penal Code.
5. The matter was referred for enquiry under section

202 of the Cr.P.C. On the basis of enquiry, the Trial Court issued process against the respondents under section 477A, 420, 409, 120B r/w section 34 of the Indian Penal Code. In pursuance of the process, summons was issued to the respondents on several times. But summonses could not be served on the respondents. The respondents are resident of Secunderabad, Andhra Pradesh. Hence, summonses were sent to Additional Chief Metropolitan Magistrate, Secunderabad. Thereafter, Mr.G.Mahadev, PC 5257 of P.S.Gopalapuram Police Station submitted the report that the respondent nos.3 and 4 were not found on the spot. Hence, summonses were returned unserved through Additional Chief Metropolitan Magistrate, Secunderabad.

6. In view of the above facts, petitioner submitted an application for issuance of warrant against the respondents under section 87 and 91 of the Cr.P.C. The said application came to be dismissed on the ground that the summons were not served upon the respondents.

7. Heard the learned counsel for the petitioner.

8. Perused the report of the Mr.G.Mahadev, PC 5257 of P.S.Gopalapuram Police Station and report of Additional Chief Metropolitan Magistrate, Secunderabad.

9. It appears that in pursuance of the summons, Mr.G.Mahadev, PC 5257 of P.S.Gopalapuram Police Station from went to the address of the summons but both the respondent nos.3 and 4 were not found on the address

given.

10. On perusal of the provision of section 87 of the Cr.P.C. it appears that the court can issue warrant against the accused if, either before issuance of summons or after the issue of summons but before time fixed for his appearance, the Court sees reason to believe that the accused has absconded or will not obey the summons.

11. In the present case, it appears that the petitioner has taken steps for service of summons on several occasions but summonses could not be served upon respondent nos.3 and 4. Ultimately, the concerned Police Station has filed report that the respondent nos.3 and 4 were not found on the address given. The said material is sufficient to hold that there are reasons to believe that the respondents are avoiding process of the court.

12. In view of the above, I am of the opinion that the applicant has made out a case for issuance of warrant against Respondent nos.3 and 4. Order of Trial Court is not legal and valid. Therefore, it requires to be set aside. There is no need to issue summons against the telephone operator under section 91 of the Cr.P.C. With these observations, I pass the following order:

a. Rule made partly made absolute.

b. The order passed by Additional Chief Metropolitan Magistrate on Exhibit 21 in C.C.No.134/SW/2011 is hereby

set aside.

c. Issue non-bailable warrant against respondent nos.3 and 4.

(SURENDRA P. TAVADE, J.)