

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.3099 OF 2022
IN
CRIMINAL APPEAL NO.277 OF 2022**

Alpesh Shah

.... Applicant

versus

Ramnath P. Iyer & Anr.

.... Respondents

.....

- Mr. Sameer Sarambalkar i/b. Shivaji R. Nirmale, Advocate for Applicant.
- Mr. P. H. Gaikwad, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 21st SEPTEMBER, 2022**

P.C. :

1. This is an application for staying of the warrant and also for cancellation of the warrant. The Application mentions that in this case the High Court had issued bailable warrant against the Respondent/accused, who is the Applicant in this Interim Application.

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2. The original Appeal is filed by the Appellant Ramnath P. Iyer, who was the complainant in proceedings u/s 138 of Negotiable Instruments Act, 1881. The Applicant herein Alpesh Shah was acquitted in that case bearing C.C.No.6172/SS/2016. The order was passed by the Metropolitan Magistrate, 48th Court, Andheri, Mumbai on 05/01/2019. The Appellant/original complainant Ramnath P. Iyer preferred Appeal against the acquittal. It was heard by this Court (Coram : Nitin W. Sambre, J.) and vide order dated 21/12/2021, leave was granted. Clause 4 of that order mentions that action u/s 390 of Cr.P.C. be initiated.

3. The Registry of this Court addressed warrant of arrest u/s 390 of Cr.P.C. dated 19/08/2022 to the Chief Metropolitan Magistrate, Bombay and it was mentioned thus,

‘You are directed to cause the said, Respondent – Alpesh Shah (Respondent – orig. Accd.) to be arrested and brought before the Court of, Metropolitan Magistrate, 48th Court, Andheri, Mumbai.

Court may deal with the said Respondent – Alpesh Shah (Respondent – orig. Accd.) in accordance with the provision of Section 390 of the Code of Criminal Procedure.’

4. The order of this Court dated 21/12/2021 nowhere mentions that the warrant of arrest was to be issued against the Applicant herein/the original accused. The action u/s 390 of Cr.PC. is for securing his presence during pendency of the Appeal against the acquittal. It would not be right to arrest the original accused unnecessarily. The communication from the registry indicates that the registry itself has treated that order as warrant of arrest, which is not reflected from the order itself.
5. This Court (Coram : Nitin W. Sambre, J.) had not specifically directed issuance of warrant. The relevant provisions for considerations are as follows;

‘Section 390 of Cr.PC. -

Arrest of accused in appeal from acquittal – When an appeal is presented under section 378, the High Court

may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal or admit him to bail.'

6. This section gives a discretion to the High Court to issue warrant. It is not compulsory that warrant has to be issued. When this Court wants to issue warrant under this section, it would be specifically mentioned in the order. In this case there was no such specific directions for issuance of warrant.

7. Sections 70 and 72 of Cr.P.C. are also relevant, which read thus;

'Section 70 of Cr.P.C. -

Form of warrant of arrest and duration – (1) *Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.*

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Section 72 of Cr.PC. -

Warrants to whom directed – (1) *A warrant of arrest shall ordinarily be directed to one more more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.*

(2) *When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them.'*

8. In this particular case, the Applicant was an accused in a case arising out of the private complaint u/s 138 of Negotiable Instruments Act, 1881. He was acquitted from the case. After his acquittal, unless there were extreme circumstances justifying issuance of warrant for securing his presence, this step on the part of registry was not necessary.

9. Therefore in this case, the warrant issued by the registry on 21/12/2021 is quashed and set aside. The Applicant

herein shall appear before the trial Court on 04/10/2022 and the trial Court shall complete the formalities u/s 390 of Cr.P.C. to its satisfaction.

10. With these observations, the application is disposed of.

(SARANG V. KOTWAL, J.)