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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1376 OF 2021

Sushela Nathu Sanas and anr. ... Applicants
V/s.
The State of Maharashtra and anr. ... Respondents

None for the Applicants.
Mrs. M.R. Tidke, APP for the Respondent/State.

CORAM : N.R. BORKAR, J.
DATE : 19 JULY 2022.

P.C.

1. The present Applicants are accused in Summary Criminal Case No. 770 of 2019 pending on the file of Judicial Magistrate First Class and Civil Judge Junior Division at Wai.

2. By order dated 27 November 2021, the learned Magistrate issued the Non-Bailable Warrant against the present Applicant. The said order is impugned in this application.

3. This Court on 31 January 2022 passed the following order:

“1. *Heard learned counsel for the applicants.*

2. *By this application, the applicants have impugned the order dated 27th November 2021 passed by the learned Judicial Magistrate First*

Class, Wai, District - Satara, in S.C.C No.770 of 2019, by which the learned Magistrate issued Non-Bailable-Warrant (for short 'NBW'), as against the applicants.

3. *Learned Counsel for the applicants submits that without service of summons, the trial Court issued NBW. He submits that the trial Court vide order dated 2nd December 2019 issued summons as against the applicant and other co-accused for the alleged offences punishable under Sections 504, 506 r/w 34 of the Indian Penal Code. Learned Counsel for the applicants submits that the matter was posted on several dates thereafter and that the matter was adjourned from time to time 'for awaiting summons'. He submits that without verifying whether the summons was served on the applicants or not, the learned Judge on an application filed by the respondent No.2– complainant for issuing NBW, without verifying the status of the summons report, issued NBW, as against the applicants.*

4. *Issue notice to the respondents, returnable on 8th March 2022. Learned APP waives notice on behalf of the respondent No.1–State. In addition to the Court notice, applicants to serve the respondent No.2, by private notice and file affidavit of service before the next date.*

5. *Notice to indicate that an endeavour shall be made to dispose of the application finally, at the stage of admission, even if none appears on behalf of respondent No.2.*

6. *Learned Counsel for the applicants to supply a spare copy in the Registry, if not supplied, within one week from today, so as to enable the Registry to issue notice to the respondent No.2.*

7. *In the meantime, till the next date, the the order dated 27th November 2021 passed by the learned Judicial Magistrate First Class, Wai, District - Satara, in S.C.C No.770 of 2019, as against the applicants, is stayed.*

8. *Stand over to 8th March 2022.”*

4. In my view instead of examining the submissions of the Applicants for the first time, the best course would be to permit the Applicants to file an application for cancellation of Non-Bailable Warrant before the trial court. If such application is moved, the trial court shall decide the same on its own merits. To enable the Applicants to move an application, the interim order dated 31 January 2022 shall remain in operation for a period of two months from today.

5. Criminal Application is disposed of in above terms.

(N.R. BORKAR, J.)