

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

CRIMINAL APPLICATION NO.1694 OF 2019

Dilip Malkappa Annareddy ...Applicant
Versus
The State of Maharashtra & Anr. ...Respondents

Mr. Satish R. Mishra for the Applicant

Ms. Veera Shinde, A.P.P for the Respondents–State

PSI Mr. Vijay Thosar from Vakola Police Station, is present

CORAM : REVATI MOHITE DERE, J.
(THROUGH VIDEO-CONFERENCING)
THURSDAY, 20th JANUARY 2022

P.C. :

1 Heard learned counsel for the parties.

2 Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives service on behalf of respondents–State.

3 By this application, the applicant seeks quashing and setting aside of the proclamation issued as against him by the learned Metropolitan Magistrate, 71st Court at Bandra, Mumbai, vide order dated 29th September 2018. Learned counsel for the applicant submits that the applicant is a permanent resident of Santacruz, Mumbai, the details of which have been given in the cause-title of the application. He further submits that the applicant is a Government employee and has been working in the Food and Civil Supply Department at Mantralaya, for several years. Learned counsel for the applicant submits that the applicant was not aware that the trial had commenced nor was he informed about the said proceedings by his advocate or by the police. He submits that because the applicant was not aware that the trial had proceeded, he did not remain present before the Court and the learned Magistrate issued a warrant and thereafter proclamation, as against the applicant.

4 Today, learned counsel for the applicant has tendered an affidavit/undertaking of the applicant. In the said affidavit/undertaking, the applicant has undertaken to remain present before the trial Court at Bandra

on every date. He has also annexed his Aadhar Card and given the details of his address, where he is residing. The said affidavit/undertaking is taken on record.

4 On the last date, learned A.P.P was directed to take instructions as to whether the applicant was a Government servant and was working as mentioned by the learned counsel for the applicant with the Food and Civil Supply Department. Learned A.P.P, on instructions, states that the applicant is a Government servant and is working in the said Department.

5 Perused the papers. In the year 2003, an FIR being C.R. No. I-342/2003 came to be registered as against the applicant with Vakola Police Station for the alleged offences punishable under Sections 452 r/w 34 of the Indian Penal Code. Pursuant to the same, the applicant was arrested and immediately produced before the Magistrate and was released on bail. Thereafter, in 2005, charge-sheet came to be filed as against the applicant. According to the applicant, he was not aware that charge-sheet was filed, however, he made an application subsequently and obtained a copy of the charge-sheet. According to the applicant, he was not aware

about the trial nor had the Police Officer informed him about the proceedings and as such, he never appeared before the Court, resulting in the trial Court issuing warrant against the applicant, as, as per the police report, the applicant was not traceable. According to the applicant, he was residing at the very same address, however, no warrant was served on him. Learned counsel for the applicant submits that the Magistrate thereafter proceeded to issue proclamation as against the applicant. It appears that when the applicant learnt of the proclamation issued against him, he filed an application before the learned Metropolitan Magistrate to cancel the proclamation as well as the non bailable warrant, however, the said application was rejected by the learned Judge.

6 Learned counsel for the applicant has tendered an affidavit/undertaking today. The same is taken on record and marked 'X'. In the said affidavit/undertaking, the applicant has set out his residential address as well as annexed a copy of his Aadhar Card and a copy of Identity Card of his Office. A copy of the said affidavit/undertaking is also handed over to the concerned Investigating Officer. He does not dispute the fact that the applicant is working in the Mantralaya and the genuineness and the

authenticity of the said documents submitted by the applicant. In the said affidavit/undertaking, the applicant has undertaken to remain present on each and every date before the trial Court.

7 Considering the aforesaid, the impugned order dated 29th September 2018 as well as the proclamation and the non-bailable warrant issued as against the applicant by the learned Metropolitan Magistrate, 71st Court at Bandra, Mumbai, are quashed and set-aside.

8 It is made clear that the applicant shall remain present before the trial Court on every date, unless exempted.

9 Application is allowed and disposed of. Rule is made absolute on the aforesaid terms.

10 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.