

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

CRIMINAL APPLICATION NO.455 OF 2023

Gopiseti Ram Mohan Rao
and another

.....Applicants

Versus

The State of Maharashtra
and another

.... Respondents

Mr. Sahil Mahajan, Advocate for the Applicants.

Mr. S.H. Yadav, APP for the Respondent No.1-State.

Mr. Haresh K. Menghani, Advocate for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 07th SEPTEMBER, 2023

P.C. :

1. Heard Shri Sahil Mahajan, learned counsel for the Applicants, Shri S.H. Yadav, learned APP for the Respondent No.1-State and Shri Haresh Menghani, learned counsel for the Respondent No.2.

2. The Applicants are challenging the order dated 15.4.2023 passed by the Metropolitan Magistrate, 25th Court, Mazgaon at Sewree, Mumbai in C.C. No.2247/SS/2021 directing issuance of non-bailable warrant against them. The

Applicants are the original accused Nos.2 & 3 in the said proceedings filed by the Respondent No.2 – the complainant. The prosecution is under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 (for short, ‘N.I. Act’).

3. As a background of the impugned order, it is necessary to note that on 13.1.2023, the learned Magistrate allowed the application of the complainant for directions to the Applicants to deposit 20% amount of the cheque. The Magistrate directed the Applicants to deposit amount of Rs.1,08,560/- within 60 days from 13.1.2023. As a matter of record this order is not complied with and the said amount is not deposited. On the next occasion on 15.4.2023, the complainant made an application that the Applicants were not present before the Court and, therefore, non-bailable warrant be issued against them. It was stated in the application that earlier NBW was issued and it was cancelled but even then the Applicants had not remained present before the Court. On this application, learned

Magistrate passed the impugned order as follows :

“Accused failed to comply with the order of interim compensation passed below Exhibit-10 on 13.1.2023. Hence, issue NBW against accused Nos.2 & 3.”

4. This order dated 15.4.2023 is challenged in the present application. After that an application was preferred by the Applicants on 15.4.2023 for exemption. However, on that occasion, the learned Magistrate observed that since the NBW was already pending the new application for exemption was rejected.

5. Learned counsel for the Applicants states that the Applicants do not have an intention to evade the process of law and that they shall remain present on the next date i.e. on 12.9.2023 before the trial Court. He, therefore, submitted that the NBW issued against the Applicants be cancelled.

6. Learned counsel further submitted that the

reason for issuing the NBW against the Applicants is not sustainable in law because the learned Magistrate had observed that since the Applicants failed to deposit 20% amount of the cheque, the NBW was issued. He submitted that this course of action is not contemplated under Section 143-A of N.I. Act. In case of non-payment of the compensation the next step provided is under Section 421 of Cr.P.C. for recovery of such compensation and for that very purpose, NBW cannot be issued against the Applicants.

7. Learned counsel for the original complainant – Respondent No.2 herein submitted that his application simply was for issuance of NBW because the Applicants were not remaining present and there was no other purpose for filing that application. He submitted that it is required to be ensured that the Applicants attend the Court and the trial is not unnecessarily prolonged.

8. I have considered these submissions. While the Court may be justified in issuing the NBW if the accused are not remaining present, in the present case, the reason given

by the learned Magistrate for issuing non-bailable warrant is not tenable in law. Section 143-A sub-section (5) of N.I. Act provides that the interim compensation directed to be paid under that section can be recovered as if it were a fine under Section 421 of Cr.P.C.. Therefore, only for that purpose issuance of the NBW was not justified. However, to ensure the Applicants' presence, the learned Magistrate was justified in issuing the NBW.

9. Since the learned counsel for the Applicants has made a statement that the Applicants would remain present before the trial Court on the next occasion, some interim protection can be granted to them so that they can approach the trial Court, show their bonafides by remaining present and make an application for setting aside the order of issuance of NBW and for cancelling the NBW. To this course of action, learned counsel for the Respondent No.2 has no objection. The stand taken by the learned counsel for the Respondent No.2 is very fair.

10. Hence, the following order:

:: O R D E R ::

- i. The NBW issued against the Applicants is stayed for a period of two weeks from today.
- ii. The Applicants shall appear before the trial Court on 12.9.2023 which is the scheduled date for the said trial.
- iii. The Applicants shall make an application for cancellation of NBW issued against them and the trial Court shall consider that application in accordance with law on being satisfied with their bonafides in that behalf.
- iv. With these directions, the Application is disposed of.

(SARANG V. KOTWAL, J.)

PRADIPKUMAR
PRAKASHRAO
DESHMANE

Deshmane (PS)

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