



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2544 OF 2024
IN
CRIMINAL APPEAL NO. 939 OF 2018

Pratapsingh S/o Bhaskarrao Dhumal,
Aged : 44 years, Occ : Service,
R/o Flat No. F-1, Nalini Apartment,
Barde Nagar, Dinshaw Factory,
Borgao, Nagpur – 440013.

... Applicant

[Orig. Respondent No.1/Accused]

Versus

1. Dr. Naresh S/o Rangrao Deshmukh,
Aged : 76 years, Occ: Medical Practitioner,
R/o Near Municipal Council,
Sadar Bazar, Chalisgaon,
Tq. Chalisgaon, Dist. Jalgaon.
2. The State of Maharashtra
Through Police Station Officer,
Chalisgaon Police Station,
District Jalgaon.

... Non-Applicants

[Non-applicant No.1 is Orig.
Appellant/Complainant and
Non-applicant No.2 is Orig.
Respondent No.2]

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Mr. Suhas R. Shirsat, Advocate for the Applicant.
Mr. P. G. Godhamgaonkar, Advocate for Respondent No.1
Mrs. Chaitali Choudhari Kutti, APP for Respondent No.2-State.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 27.06.2024

Pronounced on : 01.07.2024

ORDER :

1. This is an application for canceling and recalling order of issuance of non-bailable warrant dated 25.10.2023.

2. In support of above relief, learned counsel for the applicant pointed out that applicant original accused was convicted by learned J.M.F.C. Chalisgaon for offence punishable under Section 420 of IPC and was sentenced to suffer imprisonment for two years and also to pay compensation to the tune of Rs.50,00,000/- (Rupees Fifty Lakh only) to the informant (respondent no.1 in present application) vide order dated 30.12.2014 in Regular Criminal Case No. 300/2013. That, said judgment and order of conviction has been set aside by learned Additional Sessions Judge, Jalgaon in Criminal Appeal No. 13 of 2015 by order dated 15.10.2018 and the applicant has been acquitted. Against said judgment and order of acquittal, the original complainant has preferred Criminal Appeal No. 939 of 2018, in which non bailable warrant has been issued on 25.10.2023 against the present applicant.

3. Learned counsel for the applicant further submits that the applicant is a businessman and moreover, having recently changed his address, was not aware of the dates and proceedings of the appeal.

Learned counsel pointed out that there was also communication gap between himself as well as his client i.e. present applicant. He further submits that there was no intentional or deliberate attempt to evade proceedings before this Court. That, henceforth applicant would attend the court dates regularly without default. Further, learned counsel himself assures that henceforth, the proceedings would not go unattended, and hence he prays to cancel the order of non bailable warrant passed by this Court.

4. Mr. Godhamgaonkar, learned counsel for respondent no.1-original complainant strongly opposes the application pointing out that applicant was held guilty of cheating and he was directed to pay compensation to the tune of Rs.50,00,000/- by learned J.M.F.C. Chalisgaon. That, in the said proceedings also, steps were required to seek his presence. Learned counsel invited attention of this Court to the judgment and order passed by learned J.M.F.C., Chalisgaon in R.C.C. No. 300/2013, regarding applicant absconding during proceedings in trial court also. That, he was required to be arrested and brought before the trial court. That, his such conduct dis-entitles him from getting any relief from this Court. However, learned counsel submits that if at all this Court is canceling the order of issuance of non bailable warrant, then heavy costs be saddled.

5. On hearing above submissions, learned counsel for the applicant concedes that he is ready to pay the costs.

6. Perused the papers, which show that learned J.M.F.C., Chalisgaon convicted present applicant for offence punishable under Section 420 of IPC by its judgment and order dated 30.12.2014 and apart from awarding sentence of imprisonment for two years, directed him to pay compensation to the tune of Rs.50,00,000/-. Against the same, Criminal Appeal No. 13 of 2015 was preferred before the Additional Sessions Judge, who seems to have allowed the appeal by acquitting the applicant-accused. Precisely against said order of acquittal, original complainant, a medical practitioner, has preferred appeal before this Court bearing Criminal Appeal No. 939 of 2018.

7. Record shows that since February 2019, notices were directed to be issued and re-issued to the present applicant, i.e. a respondent in the appeal. Finally, this Court by order dated 25.10.2023 noted that in spite of intimation from Advocate, present applicant did not turn up and as reports were received that he was not found on the given address, this Court issued non bailable warrant against him. Again on 21.12.2023 and 01.02.2024, fresh non bailable warrant was required to be issued and since then its report has been awaited.

8. Today applicant has appeared on his own. His counsel informs that there was communication gap and moreover applicant, as having changed his previous address, service could not be effected. He undertakes to attend court proceedings henceforth regularly. However, considering the above, the following order is passed :

ORDER

The application is allowed in terms of prayer clause [B], subject to costs of Rs.25,000/- [Rupees Twenty Five Thousand only].

[ABHAY S. WAGHWASE, J.]

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