
(2012) 07 DEL CK 0305

In the Delhi High Court

Case No : Criminal M.C. No. 2207 of 2012 and Criminal M.A. No. 7855 of 2012

Ashok Malik

APPELLANT

Vs

M/s. Soga Impex Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482, 70(2), 82
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2012) 3 JCC 2210

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Arunab Chowdhary, for the Appellant; Rajesh Mahajan and Mr. Sunil Sharma, APP, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.

Crl. M.A. No. 7850/2012 (for exemption)

1. Allowed, subject to the deficiency being rectified.

Crl. M.C. No. 2207/2012 & Crl. M.A. No. 7855/2012

This is a petition filed u/s 482 Cr.P.C., challenging the orders dated 2.3.2012 and 27.4.2012 passed by the learned Metropolitan Magistrate, Saket Courts, New Delhi in Complaint Case Nos.3648/01 of 2001 and 163/01 of 2001 titled M/s. Soga Impex Pvt. Ltd. -vs- Ashok Malik.

2. I have heard the learned counsel for the petitioner and the learned counsel for the respondent and have gone through the record. I have also heard the learned counsel for the State, who has appeared in response to the advance copy having been served on him.

3. It has been contended by the learned counsel that the petitioner was enlarged on bail on 19.12.2006 in the abovementioned complaint cases on his furnishing a

Personal Bond in the sum of Rs. 30,000/- with one surety for the like amount and thereafter has been granted permanent exemption. However, on 2.3.2012, the learned Metropolitan Magistrate had issued non-bailable warrants on account of the non-appearance of the petitioner as well as his counsel. It has been contended that the petitioner had filed an application for cancellation of warrant u/s 70 (2) of Cr.P.C., however, the said application was dismissed by the learned Metropolitan Magistrate and it was directed that his proclamation u/s 82 Cr.P.C. be issued.

4. Feeling aggrieved, the present petition has been filed.

5. It has been stated that the petitioner is a resident of England and, therefore, he could not come, as he had applied for extension of his Visa to travel to India.

6. A perusal of the complaint shows that the petitioner was summoned as an accused to face the trial in respect of an offence u/s 138 of the Negotiable Instruments Act, 1881. The petitioner was enlarged on bail on 19.12.2006 and was required to be present on all the dates in the Court whenever the matter was to be taken up. It has been stated by the learned counsel that the petitioner was exempted from personal appearance. Even if the petitioner is exempted from personal appearance, he is required to be present on all such dates when he was directed so to appear. Even on the dates for which he was exempted, he was required to be duly represented by a counsel.

7. In the instant case, the petitioner had travelled beyond the jurisdiction of India, without seeking the permission of the Court. Normally speaking, if the petitioner wanted to travel abroad, he ought to have obtained the permission from the Court for undertaking such a travel. On 2.3.2012, neither the accused/petitioner nor his counsel was present and consequently after waiting for them till about the lunch time, the Court had no other option but to issue non-bailable warrants. The petitioner is purported to have filed an application u/s 70 (2) of Cr.P.C. for cancellation of warrants. Various grounds for cancellation of warrants have been given, including an application seeking extension of Visa to travel to India.

8. First of all, warrants cannot be cancelled in absentia. For this purpose, the accused has to appear before the Court concerned. In addition to this, the learned Metropolitan Magistrate, on the date when the application u/s 70 (2) of Cr.P.C. was taken up, that is on 27.4.2012, found that the counsel representing the accused had not filed his Vakalatnama and, therefore, he had no authority to represent the accused and even the records shows that even the surety was not available at the address where he was supposed to be living. In such circumstances, the Court had no other option but to issue the proclamation against the accused.

9. The learned counsel has relied upon the judgment of this Court in Prem Cashew Industries and Others Vs. Zen Pareo, to contend that before issuance of Proclamation, an application for cancellation of warrants ought to have been

considered by the learned Metropolitan Magistrate. I have gone through the said judgment. The facts of the said case are totally different than the case in hand.

10. In the present case, the petitioner was exempted from personal appearance after being enlarged on bail. Whenever the personal exemption is granted, the accused is required to be duly represented on all the dates by a duly authorized counsel. On 2.3.2012, neither the accused nor his duly authorized counsel was present. In addition to this, the accused, without obtaining the permission of the Court, had travelled beyond the jurisdiction of this Court. This clearly is a violation of the terms and conditions of the Bail Bond, as he ought to have first obtained the permission and then only he could have travelled abroad. Even if this was ignored, the surety should have at least been available, to assure the Court that the accused would return back to India. Even the surety did not appear and as a matter of fact, he was also not traceable. Ultimately, this gives an indication that both the accused as well as the surety are not amenable to the processes of law. Under these circumstances, the learned Metropolitan Magistrate was left with no other option but to issue the proclamation, which he did. I do not find any infirmity in the orders passed by the learned Metropolitan Magistrate. Neither there is any abuse of the processes of law in the impugned orders nor there is any other order required to be passed in the interest of justice. Accordingly, the petition filed by the petitioner is totally misconceived and the same is dismissed.