

(1999) 02 BOM CK 0001

In the Bombay High Court

Case No : Criminal Revision Application No. 20 of 1999

H.C. Jain

APPELLANT

Vs

R.K. Synthetics and Fibres Pvt. Ltd. and Another

RESPONDENT

Date of Decision : 23-02-1999

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 397, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1999) CriLJ 2922

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Advocate : Shirish Gupte, instructed by Gagrath and Co, for the Appellant; K.C. Balchandani, instructed by Kamal and Co. and MIP Galieria, APP, for the Respondent

Final Decision : Allowed

Judgement

Vishnu Sahai, J.—I have heard learned Counsel for the parties. This application under Sections 397 and 482, Cr.P.C. and under Article 227 of the Constitution of India, has been preferred by the Petitioner (Original Accused No. 2) in a case u/s 138 of the Negotiable Instruments Act with a prayer that the non-bailable warrant of arrest issued against him on 19-1-1999 by the Additional Chief Metropolitan Magistrate, 40th Court, Girgaum, Mumbai, in C.C. No. 1372/S/1998, while rejecting his application for exemption, be quashed.

2. The factual matrix in which this application arises is that the petitioner is Original Accused No. 2 in a case u/s 138 of the Negotiable Instruments Act. 29th October, 1998 was the first date fixed in the said Court. On the said date, the petitioner, as also other accused persons were absent. An application for their exemption was preferred and the case was adjourned to 13th January 1999. On 13th January 1999, again the petitioner and other accused were absent; an application for exemption was moved on their behalf; and the case was

adjourned to 19th January 1999. On 19th January 1999, the petitioner was still absent and an application for exemption was moved, a true copy of which has been annexed as Exhibit B to this petition, and the said application was rejected by the learned Magistrate vide the impugned order.

3. I have heard learned Counsel for the parties. Mr. Gupte learned Counsel for the petitioner strenuously urged that the learned Magistrate committed gross impropriety in issuing the impugned non-bailable warrant against the petitioner in his application for exemption which was supported by a medical certificate of one Dr. J.K. Sharrna, M.D. of Escorts Heart Institute and Research Centre, Okhla Road, New Delhi, wherein it is mentioned that the petitioner was aged about 85 years, was suffering from Chronic cardiac problem, as also cancer and was not in a position to move at all.

4. This matter came up before me on various dates. Yesterday, it was on my board and Mr. Bulchandani learned Counsel for the respondent No. 1 strenuously urged that the learned Magistrate was wholly justified in issuing the impugned non-bailable warrant because, on 13th January 1999 an express undertaking was given by Advocate for the applicant before the Magistrate that the applicant would be present on 19th January 1999. Since the said undertaking was not reflected in the order of the Magistrate. I thought it expedient in the interest of justice to summon the record and proceedings from the Court of the learned Magistrate and directed that the matter be put up before me today.

The record and proceedings are before me.

5. True to his customary fairness, Mr. Bulchandani learned Counsel for the respondent No. 1 made a statement before me that although in his presence, the said undertaking was given by the Advocate on behalf of the petitioner on 13th January, 1999 but the same is not reflected in the records and proceedings. Mr. Bulchandani attributes it to a clerical error. I have reflected over the entire matter.

6. In a judicial matter, Courts strictly go by the record and proceedings only and since the undertaking referred to by Mr. Bulchandani is not reflected in them, it would be proper and judicious for me to hold that no undertaking in terms referred to by Mr. Bulchandani, learned Counsel for the respondent No. 1, was given by the Advocate on behalf of the applicant on 13th January, 1999.

And if no such undertaking was given, then in my view, on the facts referred to earlier, it was a grossly improper exercise of discretion on the part of the Magistrate to have issued the impugned non-bailable warrant.

7. It is true that this Court u/s 397/482, Cr. P.C. and under Article 227 of the Constitution of India does not ordinarily examine the question whether the nature of the warrant issued by a Magistrate in a given case should have been issued by him but, where the issuance of a non- bailable warrant appears to be a grossly unwarranted, nothing can prevent this Court from quashing it. But, I hasten to add that such cases would be far and few.

8. Bearing in mind the facts stated earlier, in my view, the impugned non-bailable warrant should not have been issued.

9. In the result, I allow this petition and quash the impugned non-bailable warrant of arrest dated 19th January, 1999.

It is clarified that this order has been passed in view of the peculiar facts mentioned above and would not operate as a precedent.

Office is directed to transmit the record and proceedings by tomorrow to the concerned Court. Application stands disposed off finally.