
(1996) 12 MP CK 0044

In the Madhya Pradesh High Court

Case No : Miscellaneous Cr. Case No. 3825 of 1996

Ramkishan Baijnath Jaiswal and Others

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 12-12-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1997) 2 MPLJ 564

Hon'ble Judges : Jayant Govind Chitre, J

Bench : Single Bench

Advocate : T.N. Singh, for the Appellant; K.N. Vijayvargiya, Panel Lawyer, for the Respondent

Judgement

J.G. Chitre, J.

Shri T.N. Singh, counsel for the Petitioners; Shri K.N. Vijayvargiya, P.L. for State.

This application is heard and decided at motion hearing, because small point is involved.

Shri T.N. Singh, submitted that when the application was submitted for exemption of the accused, the trial Court rejected it and without giving opportunity to the applicants-accused, cancelled their bail bonds and issued arrest warrants with proceeding for recovery of security amount from sureties. He further submitted that the revisional court also did not consider the case of the Petitioners sympathetically. Shri Singh prayed that this Court be pleased to invoke the inherent powers in view of Section 482 of Criminal Procedure Code, 1973 (hereinafter referred to as Code for short).

Shri K.N. Vijayvargiya, P. L. submitted that now a days it has become the practice to have cyclostyled forms for bail application, for exemption and other reliefs.

Shri T. N. Singh open heartedly, in the interest of justice, produced cyclostyled

Xerox form meant for prayer of the exemption of the accused. Shri Vijayvargiya submitted that such practice be deprecated, to that Shri T. N. Singh also agreed. Both submitted that the accused are taking it for granted that the exemption would be granted to them from attendance in the court.

The judicial system is still hale, hearty and stern on account of maintaining old traditions flowing from noble practice in law. The traditions are still maintained though attempts are being made to create dent. The healthy traditions of the practice are threatened to the eclipse by casual approach from some persons who are appearing in the court in various capacities. One incident of this is coming before this Court in the form of cyclostyled application for exemption of the accused indicating that it is being taken for granted that exemption would be granted to the accused. These two forms which have been laid before this Court, show that everything has been typed and cyclostyled. 31/2 lines" space has been left for the purpose of writing some matter. Such applications should not be submitted and when submitted it need not be accepted by the court because it by itself suggests that improper approach is followed by the persons praying for exemption and persons presenting such applications. Granting exemption to the accused so far as presence of the accused in the court is concerned, is a matter pertaining to the domain of discretion. Needless to say that such judicial discretion has to be exercised judiciously and after examining the genuineness of the cause shown. Exemption should not be sought as a matter of routine and should not be granted as a matter of routine. The word "SATISFIED" means always that there has to be a scrutiny of genuineness of the cause and there has to be a judicial satisfaction of the court about the genuineness of the cause shown for exemption to the accused so far as his attendance in the court is concerned. At the time of such satisfaction, the court is bound to ask some questions to the advocate present for such accused-applicants or relatives of such accused presenting any application for exemption. At that time an opportunity should be given to the advocate to make the enquiry about the cause of the absence of the accused if it is not known to him. If the cause is known to the advocate, it is his duty to submit the said cause before the court enabling the court to judge the cause causing the accused to remain absent.

Shri T.N. Singh submitted that in this case no such opportunity has been granted to the accused. He further submitted that on account of default of the advocate, the applicants are likely to suffer as their bail bonds have been cancelled and arrest warrants have been issued against them.

Casualness is always dangerous. It always results in unhappiness. Sometimes it causes dangerous damage to the persons at receiving end. It is high time that such casual approach has to be abandoned by every concerned person.

From the perusal of the record, which has been submitted before this Court, it is apparent that sufficient opportunity should have been given by the trial Court to the accused, sureties to show cause, before issuance of arrest warrants against accused. The sureties should have been getting sufficient opportunities for the

purpose of submitting their say as to why their bonds should not be treated forfeited and as to why the amount of security should not be recovered from them. Trial court is bound to give such opportunity to them because by the absence of those accused they would be suffering as they would be required to forgo the amount of security for which they stood the sureties for assuring presence of the accused in the court. The revisional court should have been also attentive to this while deciding revision petition. The revisional court has not probed this matter as it should have been. Therefore, this petition is allowed, by passing following order:

The arrest warrants issued against the applicants are hereby quashed. The action, which is proposed to be taken against the sureties for recovery of amount of security from them in respect of their surety bonds qua these applicants, stands quashed. Instead of that the trial Court is directed to obtain necessary explanation from the applicants about their absence. The trial Court is directed to issue show cause notices to the sureties, if it finds it necessary, directing them to show cause as to why the bonds furnished by them for assuring the presence of the applicants in the court for which they entered to the surety bonds, should not be treated as forfeited and amount of security should not be recovered from them.

The order passed by the trial Court forfeiting the personal bonds of the applicants also stand cancelled. In view of the above said directions which direct for an opportunity to the applicants to show cause for explaining their absence on that date. C. C. to all parties.