

(2012) 02 MP CK 0095

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 1284 of 2012

Shrimati Madhu Gupta

APPELLANT

Vs

Veer K. Shrivastava and others

RESPONDENT

Date of Decision : 24-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482, 87
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2012) ILR (MP) 1097

Hon'ble Judges : S.N Aggarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Aggarwal

1. This petition u/s 482 Cr.P.C. is directed against an interlocutory order of the trial court dated 28th November, 2011 dismissing the application of the petitioner u/s 87 Cr.P.C. and thereby declining his request to compel the appearance of respondent No. 1 through issuance of non bailable warrants. It is submitted by the learned counsel appearing on behalf of the petitioner that respondents No. 1 to 3 are the accused persons in a private complaint u/s 138 of NI Act filed against them. Respondents No. 2 and 3 are stated to have already entered appearance and secured their bail from the trial court. It is submitted that respondent No. 1 is absconding and despite summons being sent to him twenty times it was not possible to serve him in the ordinary course. Compelled by the same, an application u/s 87 Cr.P.C. was filed by the petitioner which has been rejected by the trial court vide the order impugned in the present petition mainly on the ground that the complaint u/s 138 NI Act is decided summarily and, therefore, warrants cannot be issued.

2. It shall be relevant to refer to the provisions contained in section 87 Cr.P.C. which are extracted hereunder :

87. Issue of warrant In lieu of, or in addition to, summons.-A court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant of his arrest -

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure."

3. A bare perusal of the above statutory provisions contained in section 87 Cr.P.C. would show that in case it is not possible to serve summons to an accused person in the ordinary course, then the court is not powerless to compel his presence through issuance of warrants of arrest against him. The view taken by the trial court in the impugned order that since the complaint u/s 138 NI Act is to be decided summarily, warrants of arrest cannot be issued against the accused person, appears to be contrary to law and in the present case if the said view is accepted then it will occasion in miscarriage of justice to the petitioner. She is not able to prosecute the complaint u/s 138 NI Act for want of service upon respondent No. 1. In case summons have already been issued to respondent No. 1 twenty times as submitted by the learned counsel for the petitioner, then there is every reason to believe that respondent No. 1 is absconding from the process of court and it would be necessary to compel his presence through warrant of arrest. It is a fit case to exercise the inherent powers of this Court u/s 482 Cr.P.C. to remedy the injustice caused to the petitioner/complainant by not allowing her request for compelling the presence of respondent No. 1 through issuance of warrants of arrest against him. In view of the foregoing and having regard to the facts and circumstances of the case, the impugned order of the trial court is set aside. This petition is allowed. The Trial Court is directed to direct issuance of warrants of arrest against respondent No. 1 to compel his presence before it in the proceedings u/s 138 NI Act pending against the respondents.