

(2012) 04 KAR CK 0086

In the Karnataka High Court

Case No : Criminal Petition No. 2090 of 2012

Sri Sanjeev R. Khandelwal Director, M/s Lakshmi Cements
and Ceramics Industries Ltd.

APPELLANT

Vs

The Enforcement Officer, Employees Provident Funds, Bellary

RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Citation : (2012) 04 KAR CK 0086

Hon'ble Judges : H.S. Kempanna, J

Bench : Single Bench

Advocate : Bipin Hegde, for the Appellant;

Final Decision : Allowed

Judgement

H.S. Kempanna

1. The petitioner in this petition filed u/s. 482 of Cr.P.C. has sought for quashing of the order dated 18.11.2011 passed in C.C. No. 81/11 by the Addl. Civil Judge and JMFC, Hosadurga wherein non-bailable warrant has been directed against him. The brief facts of the case are :-

The respondent-complainant filed a private complaint against the petitioner and seven others alleging that they have committed offences u/s. 76(d) of the Employees Provident Fund Scheme 1952 r/w. Section 14(1A) and 14A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 before the learned Magistrate.

After the said complaint came to be filed, by order dated 18.2.2011, the learned Magistrate took cognisance of the offences alleged, registered the case and directed issue of summons to the accused including this petitioner returnable by 25.4.2011.

2. As on 25.4.2011 since summons directed against the accused were not served, the learned Magistrate directed re-issue to summons to all the accused

returnable by 25.6.2011. On that day, as the learned Judge was on OOD for training, it was adjourned to 29.7.2011. On 29.7.2011 since the summons directed earlier to the accused were not served, the learned Judge directed re-issue of summons to accused Nos. 1 to 6 and 8 only returnable by 16.9.2011. No summons was directed against the present petitioner who is accused No. 7 in the case. On 16.9.2011 summons directed to A1 to A6 and A8 returned unexecuted. However, one Sri. K.M.P. filed power for accused No. 8. Therefore, the learned Magistrate directed re-issue of summons to A1 to A6 only returnable by 18.11.2011. On that day also no summons was directed against this petitioner who is Accused No. 7 in this case. On 18.11.2011 the learned Magistrate noting accused Nos. 7 and 8 as absent, directed non-bailable warrant as against them and summons to accused Nos. 1 to 6 returnable by 21.12.2011.

3. The petitioner being aggrieved of the order dated 18.11.2011 has filed the present petition praying to quash the said order directing non-bailable warrant as against him.

4. The learned counsel appearing for the petitioner contended the order directing issue of non-bailable warrant against the petitioner without summons having not been issued and served cannot be sustained. He further submitted that in view of what has been held by the Apex Court in a catena of decisions, the court below could not have directed non-bailable warrant without service of summons to the petitioner. He further submitted that the petitioner would appear before the learned Magistrate on his own on the next date of hearing which fixed on 19.5.2012 and have recourse to law.

5. Having regard to the order that is challenged in this petition, notice to the respondent is dispensed with. A perusal of the certified copy of the proceedings of the learned Magistrate goes to show, no summons has been directed against this petitioner to appear before him either on 16.9.2011 or on 18.11.2011. Suo-motu the learned Magistrate on 18.11.2011 without having ordered for issue of summons to this petitioner noting that he is absent has directed non-bailable warrant against him returnable by 21.12.2011. As contended by the learned counsel for the petitioner this order of the learned Magistrate directing non-bailable warrant against the petitioner without issuing summons and having not been served on him cannot be sustained. Further, as the learned counsel for the petitioner submitted that the petitioner would appear before the learned Magistrate on the next date of hearing which is fixed on 19.5.2012 on his own and have recourse to law, the impugned order directing non-bailable warrant, against the accused cannot be sustained and deserves to be quashed. Accordingly, I proceed to pass the following order :-

- i) Criminal petition is allowed;
- ii) The order dated 18.11.2011 directing non-bailable warrant to this petitioner arrayed as accused No. 7 in the case is set-aside;
- iii) He shall appear before the learned Magistrate on 19.5.2012 on his own, as

submitted by the learned counsel for the petitioner, and have recourse to law.