(1989) 01 RAJ CK 0039

In the Rajasthan High Court

Case No : Criminal Misc Petition No. 983 of 1988

Vimal Chand Lodha APPELLANT

Vs

Income Tax Officer, C-Ward and Another RESPONDENT

Date of Decision : 09-01-1989

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 438, 482

Citation : (1989) WLN 57

Hon'ble Judges : G.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.K. Sharma, J.—This petition u/s 482, Cr.P.C. has been preferred against the order dated 19th August 1988, passed by the CJM Economic Offences, Jaipur, by which he ordered to issue warrant of arrest against the petitioner.

2. This is a case of very petty nature Mr. Singh argued that this is a case of not filing the Income Tax Department since 1971, and he has been regularly submitting his returns unfortunately, the returns for the assessment year 1981-81, 1981-82, 1982-83, & 1983-84 were not submitted by the petitioner, in time, through they were submitted, later on, for not submitted his returns for the aforesaid years, the petitioner was prosecuted by the Income Tax Department. The learned trial court after taking cognizance against the petitioner, issued a non-bailable warrant against him Aggrieved by that order of issuance of non-bailable warrant, the present petition has been preferred.

3. Mr. Garg argued that in such matters, no petition u/s 482, Cr.P.C. lies. He submitted that the best course for the petitioner would have been to have moved the court u/s 438, Cr.P.C. for anticipatory bail. While referring to the case of Rajveer Singh v. State, registered as Miscellaneous Application No. 1949/88, be argued that in that case also, a non-bailable warrant was issued, but, that was cancelled by this Court, and while granting bail, the petitioner was directed to

appear before the trial court, within fifteen days. And so according to Mr. Garg, in the similar circumstances, the petitioner in this case also, should have moved an application u/s 438, Cr.P.C. and a petition u/s 482, Cr.P.C. does not lie. It was also argued that according to law, in such cases, the trial court is empowered to issue warrants for securing presence of the accused.

4. Considered the arguments. No doubt, there has been no abuse of process of the court in this matter; and a petition u/s 482, Cr.P.C. does not lie, but, in the interest of justice, it can be looked into by this Court. This is another thing that the petitioner should have moved an application u/s 438, Cr.P.C. But, in such matters which is simply a non-compliance of the provisions of the Income Tax Act, i.e. a simple matter of not filing the returns in time, the offence appears to be a very petty one. The returns were filed but with delay subsequently, and for filing returns with delay, the Income Tax Department is fully empowered to impose some penalty upon the petitioner, according to law, and the assessee can be prosecuted also by the department as they have done in the present case; but, such offences are not so serious in nature, and are technical offences, where issuance of non-bailable warrant is not appreciable. No doubt, law says that the lower court has power to issue both bailable and non bailable warrants, but, I fail to understand, how the Magistrate in this case, took such a serious view and issued a non-bailable warrant against the assessee petitioner. It is not that type of case where the learned CJM should have exercised his power in such a manner by issuing a non-bailable warrant. He could have issued a bailable Warrant at the first instance, and if the assessee or the petitioner would have avoided its execution, then, the court could have taken such action. But, at the first instance, the learned Magistrate should not have shown his power of issuing a non bailable warrant, which is not appreciable. Now, in dismissing this petition, the petitioner is asked to move an application u/s 438, Cr.P.C. that world be nothing but wastage of time both for the petitioner as well as this Court. It is a trivial matter, and in the interest of justice, instead of asking the petitioner to file a regular bail application u/s 438, Cr.P.C. I deem it proper to pass necessary orders here itself.

5. While accepting the petition, it is directed that the petitioner should appear before the trial court on 18th February, 1989. It is further directed that on appearance by the petitioner before the CJM, Economic Offences, Jaipur, he shall be released on bail on his furnishing a personal bond in the sum of Rs. 10,000/- together with one surety in the like amount, to the satisfaction of the trial court.