

Cri. R.C. (MD) No. 186 of 2015

Jeevan Emu Care Indian (P) Ltd. v. State of T.N.

2015 SCC OnLine Mad 4029 : (2015) 3 MWN (Cri) 88 : (2015) 2 LW (Cri) 110

(BEFORE S. NAGAMUTHU, J.)

1. M/s. Jeevan Emu Care Indian (P) Ltd., Rep. by its Managing Director, V. Rajapandi 18 Society Street, Near Vani Vilas Signal Dindigul
2. V. Rajapandi
3. V. Senthil Murugan
4. Banu
5. R. Mohan
6. S. Balakrishnan
7. Premalatha
8. K. Suresh Revision Petitioners/Accused

v.

The State of Tamil Nadu Rep. by its Deputy Superintendent of Police Economic Offence Wing II Dindigul Respondent/Complainant

For Petitioners:: Mr. I. Subramaniam Senior counsel for Mr. K.P.S. Palanivelrajan

For Respondent:: Mr. C. Mayil Vahana Rajendran Addl. Public Prosecutor

Cri. R.C. (MD) No. 186 of 2015

Decided on June 18, 2015

Prayer Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C., to call for the records in C.C. No. 3 of 2015 on the file of Special Court for TNPID Cases, Madurai, dated 06.02.2015 and set aside the same.

ORDER

The petitioners are the accused in C.C. No. 3 of 2015 on the file of the Special Court for Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1997 Cases, Madurai. The respondent has laid a final report alleging that the petitioners have committed offences punishable under Sections 420, 406 read with 120(B) IPC and Section 5 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act 1997. Seeking to quash the order of the Special Court taking cognizance of the said offences on the above police report, the petitioners have come up with this petition.

2. I have heard Mr. I. Subramaniam, learned Senior counsel for Mr. K.P.S. Palanivelrajan, learned counsel, appearing for the petitioners and Mr. C. Mayilvahana Rajendran, learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

3. The learned Senior counsel advanced his arguments in this matter at length. At the end, the learned Senior counsel, however, submitted that he does not press for any adjudication in this matter and this petition may be dismissed as withdrawn leaving it open for the petitioners to work out their remedy in the manner known to law. As a matter of fact, the learned counsel on record has made an endorsement not pressing this petition.

4. In view of the above, this petition is dismissed as not pressed, however, giving liberty to the petitioners to work out their remedy in the manner known to law. Consequently connected Miscellaneous Petitions are dismissed.

5. Before parting with this case, I wish to make the following observations:-

During the course of arguments, the learned Senior counsel brought to my notice that the learned Special Judge, on taking cognizance of the offences, without issuing summons to the accused had straight away issued non bailable warrant for the arrest of the petitioners and for their production before the said Court. The learned Senior counsel submitted that the said procedure adopted by the trial Court would amount to deprivation of the fundamental rights of the petitioners guaranteed under Articles 21 and 19 of the Constitution of India. The learned Senior counsel further submitted that though the Hon'ble Supreme Court has issued directions and guidelines to the trial Courts as to when and under what circumstances warrant, either bailable or non bailable, could be issued, it often happens in this State that the Subordinate Courts do not follow the same. Having heard the said submissions by a very respectable Senior counsel and the former Public Prosecutor, this Court thought it necessary to call for remarks from the learned Judge, in respect of the above submissions of the learned Senior counsel.

5.1. As called for, the learned Special Judge has submitted his remarks under D. No. 523/2015 dated 04.06.2015, wherein, he has stated as follows:

"Therefore, at the time of taking the case on file, this Court issued summons to A1, M/s. Jeevan Emu Care India (P) Ltd., and the accused A2 and A8, namely, V. Rajapandi and Suresh, the offences said to have been committed by the accused are non bailable offences and since the case is triable by following the procedure for trial of warrant cases under Chapter XIX of Cr.P.C., he issued non bailable warrant." (sic)

The learned Judge, having referred Section 204 Cr.P.C., has further stated that since the case is a warrant case, non bailable warrant was issued to secure the accused A3 to A7. This explanation offered by the learned Judge is not convincing.

6. In this regard, I may refer to the judgment of the Hon'ble Supreme Court on this subject. In *Inder Mohan Goswami v. State of Uttaranchal* reported in (2007) 12 SCC 1, the Hon'ble Supreme Court has discussed the above issue in detail. The Hon'ble Supreme Court in paragraph Nos. 50 to 56 has held as follows:

"Personal liberty and the interest of the State

50. Civilized countries have recognized that liberty is the most precious of all the human rights. The American Declaration of Independence 1776, French Declaration of the Rights of Men and the Citizen 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights 1966 all speak with one voice - liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with the procedure prescribed by law.

51. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

52. Just as liberty is precious for an individual so is the interest of the society in maintaining law and order. Both are extremely important for the survival of a civilized society. Sometimes in the larger interest of the Public and the State it becomes absolutely imperative to curtail freedom of an individual for a certain period, only then the non-bailable warrants should be issued.

When non-bailable warrants should be issued 53. Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:

- * it is reasonable to believe that the person will not voluntarily appear in court; or
- * the police authorities are unable to find the person to serve him with a summon; or
- * it is considered that the person could harm someone if not placed into custody immediately.

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.

55. In complaint cases, at the first instance, the court should direct serving of the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable-warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the courts proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided."

7. Subsequently, in yet another judgment in *Raghuvansh Dewanchand Bhasin v. State of Maharashtra* reported in 2012 (1) MWN (Cr.) 64 (SC), the Hon'ble Supreme Court has issued the following guidelines in paragraph Nos. 23 and 24:

23. However, before parting with the judgment, we feel that in order to prevent such a paradoxical situation, we are faced with in the instant case, and to check or obviate the possibility of misuse of an arrest warrant, in addition to the statutory and constitutional requirements to which reference has been made above, it would be appropriate to issue the following guidelines to be adopted in all cases where non-bailable warrants are issued by the Courts: -

- (a) All the High Court shall ensure that the Subordinate Courts use printed and machine numbered Form No. 2 for issuing warrant of arrest and each such form is duly accounted for;
- (b) Before authenticating, the court must ensure that complete particulars of the case are mentioned on the warrant;
- (c) The presiding Judge of the court (or responsible officer specially authorized for the purpose in case of High Courts) issuing the warrant should put his full and legible signatures on the process, also ensuring that Court seal bearing complete particulars of the Court is prominently endorsed thereon;
- (d) The Court must ensure that warrant is directed to a particular police officer (or authority) and, unless intended to be open-ended, it must be returnable whether executed or unexecuted, on or before the date specified therein;
- (e) Every Court must maintain a register (in the format given below), in which each warrant of arrest issued must be entered chronologically and the serial number of such entry reflected on the top right hand of the process;
- (f) No warrant of arrest shall be issued without being entered in the register mentioned above and the concerned court shall periodically check/monitor the same to confirm that every such process is always returned to the court with due report and placed on the record of the concerned case;
- (g) A register similar to the one in clause (e) supra shall be maintained at the concerned police station. The Station House Officer of the concerned Police Station shall ensure that each warrant of arrest issued by the Court, when received is duly entered in the said register and is formally entrusted to a responsible officer for execution;
- (h) Ordinarily, the Courts should not give a long time for return or execution of warrants, as experience has shown that warrants are prone to misuse if they remain in control of executing agencies for long;
- (i) On the date fixed for the return of the warrant, the Court must insist upon a compliance report on the action taken thereon by the Station House Officer of the concerned Police Station or the Officer In-charge of the concerned agency;
- (j) The report on such warrants must be clear, cogent and legible and duly forwarded by a superior police officer, so as to facilitate fixing of responsibility in case of misuse;
- (k) In the event of warrant for execution beyond jurisdiction of the Court issuing it, procedure laid down in Sections 78 and 79 of the Code must be strictly and scrupulously followed; and

(l) In the event of cancellation of the arrest warrant by the Court, the order cancelling warrant shall be recorded in the case file and the register maintained. A copy thereof shall be sent to the concerned authority, requiring the process to be returned unexecuted forthwith. The date of receipt of the unexecuted warrant will be entered in the aforesaid registers.

A copy of such order shall also be supplied to the accused.

S.No	The number printed on The form used	Case and particulars	Name & particulars of The person against whom warrant of arrest is issued (accused/witness)	The officer/person to whom directed	Date of judicial order directing arrest to be issued	Date of issue	Date of cancellation, if any	Due date of return	Report returned on	The action taken as reported	Remarks
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24. We expect and hope that all the High Courts will issue appropriate directions in this behalf to the Subordinate Courts, which shall endeavour to put into practice the aforesaid directions at the earliest, preferably within six months from today.?

8. Similarly in *Pepsi Foods Ltd. v. Special Judicial Magistrate* reported in (1998) 5 SCC 749, in paragraph No. 28, the Hon'ble Supreme Court has held as follows:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

9. Recently, the Hon'ble Supreme Court in *Vikas v. State of Rajasthan* reported in (2014) 3 SCC 321, while considering the same issue and after having referred to *Inder Mohan Goswami's* case, has again reiterated that issuance of non bailable warrant in the first instance without using the other tools of summons and bailable warrant to secure attendance of such a person would impair the personal liberty guaranteed to every citizen under the Constitution. In paragraph Nos. 14, 16 and 17, the Hon'ble Supreme Court has held as follows:

"14. The issuance of non-bailable warrant in the first instance without using the other tools of summons and bailable warrant to secure attendance of such a person would impair the personal liberty guaranteed to every citizen under the Constitution. This position is settled in the case of *Inder Mohan Goswami*; (2007) 12 SCC 1 and in the case of *Raghuvansh Dewanchand Bhasin v. State of Maharashtra*; (2012) 9 SCC 791 wherein it has been observed that personal liberty and the interest of the State Civilized countries is the most precious of all the human rights. The American Declaration of Independence 1776, French Declaration of the Rights of Men and the Citizen 1789, Universal Declaration of Human Rights and the International Covenant of Civil and Political Rights 1966 all speak with one voice - liberty is the natural and inalienable right of every human being. Similarly, Article 21 of our Constitution proclaims that no one shall be deprived of his liberty except in accordance with the procedure prescribed by law. The issuance of non-bailable warrant involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, this demands that the courts have to be extremely careful before issuing non-bailable warrants.

....

16. To appreciate the present case, it is pertinent to discuss the meaning of 'bailable offences' and 'non-bailable offences' and the circumstances in which a non-bailable warrant can be issued.

17. In the legislative history for the purposes of bail, the term 'bailable' and 'non-bailable' are mostly used to formally distinguish one of the two classes of cases, viz. 'bailable' offences in which bail may be claimed as a right in every case whereas the question of grant of bail in non-bailable offences to such a person is left by the legislature in the court's discretion to be exercised on a consideration of the totality of the facts and circumstances of a given case. The discretion has, of course, to be a judicial one informed by tradition methodized by analogy, disciplined by system and sub-ordinated to the primordial necessity of order in social life."

10. A perusal of the above judgments would make it ipso facto clear that since issuance of non bailable warrant involves interference into the personal liberty, which is the most precious right of an individual, the Courts have to be extremely cautious before issuing non bailable warrant. In this regard, I would state that the power to issue a warrant, either bailable or non bailable, is different from the necessity to exercise the said power. The Hon'ble Supreme Court in the above judgments has cautioned that before issuing a non bailable warrant, the Court should be extremely cautious to find whether there is absolute necessity to issue non bailable warrant without using the other tools of summons and bailable warrant to secure the attendance of such a person.

11. But, in the instant case, the learned Judge, without adhering to the above guidelines issued by the Hon'ble Supreme Court, in a casual manner, without assigning any reason, simply because he has got a power to issue non bailable warrant, has issued the non bailable warrant. This practice deserves to be deprecated.

12. In *Raghuvansh Dewanchand Bhasin's* case, the Hon'ble Supreme Court has virtually wanted the High Courts to issue appropriate directions in this behalf to the Subordinate Courts, which shall endeavour to put into practice the directions issued in the judgment at the earliest preferably within six months from the date of judgment.

13. Therefore, in my considered opinion, it is absolutely necessary for this Court atleast to issue a direction to all the Criminal Courts within the jurisdiction of this Court that in the matter of issuance of bailable or non bailable warrants, they should scrupulously follow the directions and guidelines issued by the Hon'ble Supreme Court in *Raghuvansh Dewanchand Bhasin's* case and *Inder Mohan Goswami's* case, *Vikas* case and *Pepsi Foods* case. I am only hopeful that the subordinate Courts will scrupulously follow these directions and the guidelines issued by the Hon'ble Supreme Court in the days to come.

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