

MCRC-13504-2017

*(HINDUSTAN COCA COLA BEVERAGES PVT. LTD A PRIVATE LIMITED COMPANY
REGISTERED UNDER THE PROVISIONS OF Vs THE STATE OF MADHYA PRADESH)*

11-08-2017

Shri Ramesh Saboo, learned counsel with Shri Abhijeet Bhowmik, learned counsel for the applicant.

Shri Ajay Tamrakar, learned panel lawyer for the respondent/State.

The instant petition has been filed under Section 482 praying that this Court be pleased to exercise its plenary powers and quash the impugned orders dated 3/07/2017, 25/07/2017 and 3/08/2017 passed in Criminal Case No. 1271/2000 (State of M.P. through H.D. Dubey, Food Inspector Vs. Inder Patil and others) which is pending before the Special Judicial Magistrate First Class, Jabalpur. The only relief that is sought for by the applicant is cancellation of non-bailable warrant issued against the applicant on 3/07/2017 in the pending case. The case was listed on 3/07/2017 and learned counsel for the petitioner had moved an application for exemption from personal appearance on behalf of the co-accused persons. However, on account of over-sight, the petitioner's name was not included in the said application. The petitioner is accused no. 6 before the learned trial Court. Under the circumstances, the learned Magistrate issued the non-bailable warrant against the accused on account of his absence and not filing any application for exemption from personal appearance.

Upon realizing the error, learned counsel for the

petitioner herein had moved an application before the learned trial Court on 3/07/2017 itself for exemption from personal appearance which was fixed for consideration on 25/07/2017 and on the said date, the application was dismissed. Thereafter, on 3/08/2017, the petitioner moved an application under Section 70 (2) of the Code of Criminal Procedure for cancellation of non bailable warrant issued by the Court.

Reliance was placed on the order passed by this Court in M.Cr.C. No. 4417/2017 dated 21/03/2017 in which it has been held that personal appearance of the accused is not mandated under the provisions of Section 70 (2) and that the same can be decided in his absence by deciding one way or the other. At page 3 of the order, it is observed by this Court that in cases where the accused absence is inadvertent on a hearing date, though the trial Court has a right to issue non-bailable warrant, it was advisable that the said power be not exercised in a routine and mechanical manner and in the larger interest of justice, try to secure the presence of the accused on the next date of hearing by way of a bailable warrant at the first instance. The said order was placed before the learned trial Court which is evident from the impugned order dated 3/08/2017.

However, the same has not been appreciated by the learned trial Court in its right perspective and despite the said order, the learned trial Court has held that the said application for cancellation of non-bailable warrant cannot

be decided in the absence of the accused persons.
Looking at the facts and circumstances of the case which are similar to the facts and circumstances of the case in M.Cr.C. No. 4417/2017, the petition is allowed. The non-bailable warrant issued vide order dated 3/07/2017 is quashed and petitioner is directed to appear before the learned trial Court on 28/08/2017.
Under the circumstances, it is also directed that the original bail bonds be restored to its original position.
With these directions, the petition is disposed of.

(ATUL SREEDHARAN)
JUDGE

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