
(2010) 09 MAD CK 0278

Madras High Court (Madurai Bench)

Case No: Criminal Original Petition (MD) No. 3837 of 2010 and M.P. (MD) No. 1 of 2010

Sun Agro Chemical
Industries and Others

APPELLANT

Vs

M.P. Mahendran, B.Sc.,
Agri, Agricultural Officer
(Plant Protection)

RESPONDENT

Date of Decision: Sept. 3, 2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 205, 256, 71, 87#Insecticides Act, 1968 " "
Section 3#Negotiable Instruments Act, 1881 (NI) " Section 138

Citation: (2010) 09 MAD CK 0278

Hon'ble Judges: R. Mala, J

Bench: Single Bench

Advocate: Eddy and Embess, for the Appellant; R.M. Anbunithi, Government Advocate (Crl.
Side), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

R. Mala, J.

The Petitioners approach this Court with a prayer to call for the records in proceedings in respect of the order and the warrant

issued by the District Munsif cum Judicial Magistrate No. 1, Usilampatti in C.C. No. 182 of 2007 dated 18.03.2010 and quash the same and

further dismiss the complaint in C.C. No. 182 of 2007 on the file of the District Munsif cum Judicial Magistrate No. I, Usilampatti.

2. The case of the Petitioners is that the Respondent as defacto complainant has filed a complaint for violation of Section 3(k)(i) of Insecticide Act

1968, which was taken on file in C.C. No. 182 of 2007; during the pendency of the case, the Petitioner has filed a petition u/s 205 Code of

Criminal Procedure for the dispensing with the personal appearance of the Petitioners before the trial Court in Cr.M.P. No. 166 of 2008 and the

same was dismissed on 07.01.2008, which was challenged by way of revision in CrI.R.C. No. 227 of 2008 before this Court and the same was

allowed on 20.02.2008 dispensing with the personal appearance of the Petitioners on condition that the Petitioners shall appear as and when

required and also they are directed to co-operate for speedy disposal of the case; after that the matter was posted for several hearings and the

Petitioners were represented through their counsel and another application in Cr.M.P. No. 2610 of 2008 for deletion of some accused from the

accused column and the same was dismissed by the District Munsif cum Judicial Magistrate No. 1, Usilampatti, which was challenged before the

Principal District Sessions Judge, Madurai in CrI.R.P. No. 44 of 2009; in the meanwhile, the matter was listed on 04.03.2010, and adjourned to

18.03.2010, but it was wrongly noted by the counsel appearing for the accused as 08.04.2010 instead of 18.03.2010 and hence on 18.03.2010,

the complainant/Respondent was also absent and the accused/Petitioners neither appeared in person nor through their counsel and hence, the

Judicial Magistrate has issued Non Bailable Warrant against the Petitioners; hence, they have come forward with the present petition.

3. The learned Counsel appearing for the Petitioners would submit that the Non Bailable Warrant issued against the Petitioner is against law and it

is illegal and hence they prayed for the allowing of the petition. To substantiate their arguments, the learned Counsel appearing for the Petitioners

relied upon the decisions of the Apex Court as well as this Court.

4. The learned Counsel appearing for the Respondent would file his counter and submit that the Petitioners are arrayed as A1 to A5 and they are

following the delaying tactics; they filed Cr.M.P. No. 2610 of 2008, that has been dismissed on 01.10.2009 and this Court ordered the

dispensation of the personal appearance of the Petitioners on condition that they shall appear as and when required by the Judicial Magistrate No.

1, Usilampatti; but, the Petitioners have not followed the condition imposed by this Court; their main intention is to drag on the proceedings by way

of filing one after another petition without following the order made by this Court; the conduct of the Petitioner shows that they did not want to

contest the case except to drag on the proceedings even in the initial stage itself from the year 2007 to 2010; hence, he prayed for the dismissal of

the application.

5. Heard the learned Counsel appearing for the Petitioners as well as the learned Counsel appearing for the Respondent and perused the materials

available on record.

6. The Respondent herein has been filed a complaint u/s 3(k)(i) Insecticide Act against the Petitioners, which was taken on file in C.C. No. 182 of

2007; during the pendency, the Petitioners have filed a petition in C.M.P. No. 166 of 2008, that has been dismissed, against which a revision in

CrI.R.C. No. 227 of 2008 has been filed, which was allowed on the following terms:

Accordingly, this Court is constrained to set aside the order of the learned District Munsif cum Judicial Magistrate No. 1, Usilampatti passed in

Cr.M.P. No. 166 of 2008 in C.C. No. 182 of 2007 dated 07.01.2008 and constrained to direct the learned Magistrate to dispense with the

personal appearance of the Petitioners herein on condition to appear as and when required. It is made clear that the Petitioner should be

represented by their counsel regularly before the trial Court and accordingly co-operate for the speedy disposal of the case

After that, the Petitioners have filed a petition in Cr.M.P. No. 2601 of 2008 for deletion of some of the accused from the accused column and the

same was dismissed on 01.10.2009 which was challenged before the District and Sessions Judge in CrI.R.P. No. 44 of 2009. In the meanwhile,

the criminal case has been posted on 18.03.2010, when the Petitioners neither appeared themselves or through their counsel, the District Munsif

cum Judicial Magistrate No. 1, Usilampatti has issued Non Bailable Warrant against the Petitioners/accused.

7. The first limb of the argument advanced by the learned Counsel appearing for the Petitioners is that the offence against the Petitioners is only a

bailable offence, but the Judicial Magistrate has erred in issuing Non Bailable Warrant, which is illegal.

8. The second limb of the argument advanced by the learned Counsel appearing for the Petitioners is that on the date of issuance of Non Bailable

Warrant, the complainant himself is absent and hence, the Judicial Magistrate has committed error in issuing Non Bailable Warrant instead of

dismissing the complaint u/s 256 Code of Criminal Procedure To substantiate his claim, he has relied upon the decisions of the Apex Court as well

as this Court.

9. At this juncture, it is appropriate to consider the Section 3(k)(i) of the Insecticide Act.

3. Definitions. - In this Act, unless the context otherwise requires,-

(k) ""misbranded"" - an insecticide shall be deemed to be misbranded-

(i) if its label contains any statement, design or graphic representation relating thereto which is false or misleading in any material particular, or if its

package is otherwise deceptive in respect of its contents; or

Admittedly on 18.03.2010, Non Bailable Warrant has been issued to the Petitioners. The diary extract would run thus:

Complainant absent. A7, A7 present. A1 to A4 appearance dispensed. While the Court directed to appear before the court for copies. But not

present. No representation for said accused. No stay order copy produced. Hence issue NBW against for A1 to A4. execute the same on

payment of process by 15.04.2010.

10. Now this Court has to consider as to whether the issuance of Non Bailable Warrant is correct or not?

11. At this juncture, it is appropriate to consider the decision in Inder Mohan Goswami and Another Vs. State of Uttaranchal and Others, ,

wherein, the Apex Court held as follows:

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 civilised 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 or 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 court's 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.

In R. Sarathkumar v. The Inspector of Police, C-9, Police Station, Neelankarai, Chennai, wherein, this Court has held as follows:

Even when the offence is non-bailable, if a Magistrate taking cognizance of such offence decides that warrant should be issued, when the Court has

granted anticipatory bail, shall issue only a bailable warrant in the first instance.

Therefore, in a case of bailable offence when the Magistrate

decides to issue a warrant, at the first instance, he shall issue only a bailable warrant, (i.e.), the warrant containing endorsement specified u/s 71

Code of Criminal Procedure Therefore, non-bailable warrant issued without a preceding bailable warrant where the offence is bailable, is not in

accordance with the scheme of the Code of Criminal Procedure and hence illegal.

Therefore, while exercising the power conferred u/s 87, Code of

Criminal Procedure and issuing a warrant, in a case of bailable offence, the Magistrate shall always issue at the first instance a bailable warrant

(including the endorsement provided u/s 71 Code of Criminal Procedure) If the person does not appear before the Court even after execution of

bailable warrant, then and only when the Magistrate may issue a non-bailable warrant.

Therefore, in all cases u/s 138 of the Negotiable Instruments

Act, though it is possible or there is no legal infirmity for the Magistrate to issue a non-bailable warrant for the reasons to be recorded in writing,

yet, considering the bailable nature of the offence, u/s 138 of the Negotiable Instruments Act the Magistrate shall always issue ""bailable warrant"" at

the first instance. For the above reasons there appears no reason or no circumstances warranting the issue of non-bailable warrant in this case.

In Regupathi v. Govindan and Anr. reported in (2006) 2 M.L.J. 336, wherein, this Court has held as follows:

7. The learned Judge has also held in the decision, as cited supra, that:

Non-bailable warrant Issued without a preceding bailable warrant where the offence is bailable is not in accordance with the scheme of the Code

of Criminal Procedure and hence illegal. Therefore, while exercising the power conferred u/s 87, Code of Criminal Procedure and issuing a

warrant, in a case of bailable offence, the Magistrate shall always issue at the first instance a bailable warrant (including the endorsement provided

u/s 71, Code of Criminal Procedure). If the person does not appear before the Court even after execution of bailable warrant, then, and only then

the Magistrate may issue a non-bailable warrant. Therefore, in all cases u/s 138 of the Negotiable Instruments Act, though it is possible or there is

no legal infirmity for the Magistrate to issue a non-bailable warrant for the reasons to be recorded in writing, yet, considering the bailable nature of

the offence u/s 138 of the Negotiable Instruments Act the Magistrate shall always Issue ""bailable warrant"" at the first instance. For the above

reasons there appears no reason or no circumstances warranting the issue of non-bailable warrant in this case.

12. Considering the above said citations, the dictum laid down by the Apex Court as to when the offence is bailable, in what circumstances Non

Bailable Warrant can be issued. But, in the present case, the Judicial Magistrate has committed error in issuing non bailable warrant, he ought to

have issued only bailable warrant and if the person does not appear even after the execution of the warrant, then, Non Bailable Warrant has to be

issued. In such circumstances, I am of the view that the Non Bailable Warrant issued against the Petitioners are illegal and the same is liable to be

set aside.

13. The learned Counsel appearing for the Petitioners would further submit that in an earlier order, when they are questioning the order made in

Cr.M.P. No. 166 of 2008, this Court has passed the following order:

Accordingly, this Court is constrained to set aside the order of the learned District Munsif cum Judicial Magistrate No. 1, Usilampatti passed in

Cr.M.P. No. 166 of 2008 in C.C. No. 182 of 2007 dated 07.01.2008 and constrained to direct the learned Magistrate to dispense with the

personal appearance of the Petitioners herein on condition to appear as and when required. It is made clear that the Petitioner should be

represented by their counsel regularly before the trial Court and accordingly co-operate for the speedy disposal of the case.

A perusal of the above order would show that it is true a direction has been given to the Petitioner to appear before the Judicial Magistrate Court

as and when required and it was made clear that they should be represented by their counsel regularly and they are also directed to co-operate for

the speedy disposal of the case.

14. Admittedly, when the matter came up for hearing on 18.03.2010, the judicial Magistrate passed the following order:

Complainant absent. A7, A7 present. A1 to A4 appearance dispensed. While the Court directed to appear before the court for copies. But not

present. No representation for said accused. No stay order copy produced. Hence issue NBW against for A1 to A4. execute the same on

payment of process by 15.04.2010.

Since, the offence against the Petitioners is bailable, they are entitled only for bailable warrant not Non bailable. The Petitioners are specifically

directed on 04.03.2010 as follows:

Complainant present. A6, A7 are absent. Petition filed and allowed. A1 to A5 appearance dispensed on perusal of records copies not furnished.

Hence for copies. Hence the all accused are appeared before this Court on 18.03.2010. If fails suitable orders will be passed.

Considering the above said order, though a specifically direction has been given to the accused they did not appear before the trial Court. In such

circumstances, the arguments advanced by the learned Counsel appearing for the Petitioners does not merit acceptance.

15. The learned Counsel appearing for the Petitioners would further submit that on the date of hearing i.e. on 18.03.2010, the

complainant/Respondent was also absent and hence, they prayed for the dismissing of the complaint. But, the above said argument does not merit

acceptance.

16. At this juncture, it is appropriate to consider the decision relied upon by the learned Counsel appearing for the Respondent in U.P. Pollution

Control Board Vs. Dr. Bhupendra Kumar Modi and Another, . Considering the offence u/s 3(k)(i) of the Insecticides Act, it is an offence against

the Society and it affect the public health at large, should be dealt with strictly de hors technical objections and hence quashing the complaint in a

routine manner is not warranted. Even though this Court has issued a specific direction to the Petitioners to co-operate for the speedy disposal of

the case, they file one after another application to delay the disposal of the case and hence, the act of the Petitioners is not appreciable.

17. In such circumstances, I am of the opinion, I am constrained to issue the following directions:

(i) the Non Bailable Warrant issued against the Petitioners are set aside;

(ii) the Petitioners are directed to appear before the District Munsif cum Judicial Magistrate No. 1, Usilampatti on 20.09.2010

(ii) the District Munsif cum Judicial Magistrate No. 1, Usilampatti is directed to disposed of the case in C.C. No. 182 of 2007 within a period of

three months from the date of receipt of a copy of this order.

18. With the above said observations, this criminal original petition is disposed of. Consequently, connected miscellaneous petitions are closed.