

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 28<sup>TH</sup> DAY OF MARCH 2019**

**BEFORE**

**THE HON'BLE MR. JUSTICE ARAVIND KUMAR**

**WRIT PETITION NO.13214/2019 (GM-RES)**

**Between:**

Sri. Gunavenkataramane Gowda  
S/o Govindegowda,  
Aged about 48 years,  
Manasa education Trust,  
Addihalli Hand Post,  
Bindiganavile Hobli,  
Nagamangala Taluk – 571418.  
(Petitioner is in JC)

... Petitioner

(By Sri. Surendra Kumar.N, Advocate)

**And:**

Sri. N.S. Vijayakumar,  
S/o Shivalinge gowda,  
Aged about 38 years,  
Bindiganavile Hobli,  
Nagamangala Taluk – 571418.

...Respondent

This Writ Petition is filed under Articles 226 and 227 of Constitution of India read with Section 482 of Cr.P.C., praying to direct the learned Magistrate to pass an order on application filed by the petitioner under Section 70(2) of Cr.P.C. in C.C.No.299/2015 pending on the file of Senior Civil Judge and JMFC, Nagamangala, Mandya District immediately without any further delay.

This Writ Petition coming for Preliminary Hearing on this day, the Court made the following:

**ORDER**

This is a classic case of injustice having been perpetrated on petitioner is continued by judicial process and facts narrated herein below is a mirror to the said fact. No notice is issued to respondent, since no order adverse to the interest of respondent is being passed. Hence, same stands dispensed with.

2. Respondent herein has filed a complaint under Section 200 of Cr.P.C., alleging that petitioner has committed an offence punishable under Section 138 of Negotiable Instruments Act, 1881.

3. Learned jurisdictional Magistrate after registering the said complaint has recorded the sworn statement on 31/08/2015 and ordered for issuance of summons to accused. Order sheet of the trial Court would disclose that summons was duly served on the accused and he remained absent and as such, Non Bailable Warrant (NBW) came to be issued on 30/09/2015. Warrant has duly executed and accused was produced before the learned Magistrate on 05/11/2015 and on an application filed under Section

436 of Cr.P.C., learned Magistrate has enlarged the accused on bail on his execution of bail bond for a sum of Rs.50,000/- with a surety for the likesum. Surety offered also came to be accepted and matter came to be adjourned to 19/11/2015. Subsequently, on 19/11/2015 and on 10/12/2015 exemption application filed on behalf of accused has been allowed and the matter came to be adjourned to 16/01/2016. Thereafter, accused seems to have remained absent and as such by order dated 11/01/2019 NBW was issued against accused and notice to surety came to be issued and adjourned the matter to 01/02/2019. Order sheet of the trial Court would also disclose that from 01/02/2019, matter was ordered to be listed on 25/04/2019. However, on 14/02/2019, learned counsel appearing for accused filed an application for advancement and records were put-up on the said date by the Registry. Learned Magistrate has read over and explained in Kannada the contents of the accusation made against accused by the complainant and it is also recorded that accused has not pleaded guilty and on his

prayer for being tried, sworn statement of the complainant was treated as examination in chief. Following order also came to be passed on 14/02/2019.

**“Issue B/W to accused.  
Call on 28/02/2019**

**Sd/-  
C/C Senior Civil Judge &  
JMFC, Nagamangala”**

4. It is contention of Sri. Surendra Kumar.N, learned counsel appearing for petitioner that on the same day i.e., 14/02/2019 an application was also filed as per Annexure-C (The certified copy of the said application is appended to this petition as Annexure-C) seeking recall of NBW issued and same has not been disposed of by trial Court and as such, he seeks for a writ of mandamus being issued to the learned Magistrate to dispose of the said application, contending inter-alia that petitioner-accused has been in judicial custody from 14/02/2019.

5. The contention of the learned counsel appearing for petitioner deserves to be accepted and prayer sought for in the petition requires to be granted

for reasons more than one. Firstly, the offence alleged against the accused is a bailable offence; secondly petitioner-accused had been released on bail on 05/11/2015 itself; and thirdly application, which was filed for recall of warrant would require consideration and disposed of on same day, which has not been done and without there being any specific order passed for remanding the accused to judicial custody, which is breach of the fundamental right guaranteed to all the citizens of this Country under Constitution of India. Hence, I proceed to pass the following order:

**ORDER**

1. Writ petition is hereby allowed.
2. Senior Civil Judge and JMFC, Nagamangala, Mandya District is hereby directed to take on board C.C.No.299/2015 the application filed by petitioner-accused for recalling of NBW under Section 70(2) of Cr.P.C., Annexure-C forthwith and pass orders on said application forthwith and at any rate,

on or before 29/03/2019 before 1:30 PM  
and report compliance to the Registrar  
(Judicial) on same day.

3. A copy of this order shall be forwarded by  
the Registrar (Judicial), High Court of  
Karnataka to the said Court by fax and  
E-mail.
4. Registrar (Judicial), High Court of  
Karnataka is directed to place a copy of  
this order in the service records of the  
concerned judicial officer after bringing to  
the notice of the Hon'ble Administrative  
Judge.

Re-list this matter on 01/04/2019 for considering  
as to whether order has been complied or not.

**SD/-  
JUDGE**

SMJ