



4429.13.wp

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 4429 OF 2013

Arunkumar N. Chaturvedi

..Petitioner

Vs.

The State of Maharashtra and Anr

..Respondents

Mr.Rishi Bhuta,for the Petitioner.

Mr. A. R. Patil, APP,for the Respondent State.

CORAM :- M. L. TAHALIYANI, J.

DATE :- DECEMBER 24, 2013.

**P. C.:**

1 Heard the learned counsel Mr. Rishi Bhuta for the Petitioner and the learned Additional P. P. Mr. Patil, for the State of Maharashtra.

2 The Applicant is accused no.2 in Criminal Case No.1304/SS/2006 pending in the Court of Metropolitan Magistrate, 7<sup>th</sup> Court, Dadar for the offence punishable under Section 138 of Negotiable Instruments Act. The warrant has been issued against the Applicant as he was absent on the date of hearing. The Applicant had applied for cancellation of warrant through his advocate. It is submitted that the application has been rejected by the learned Metropolitan Magistrate on the ground that the Applicant was not present when the application for cancellation of warrant was made before the Magistrate.

3 The judgments of Andhrapradesh High Court and Delhi High Court were cited before the learned Magistrate. The learned Magistrate without considering those judgments has stated that the said judgments were not binding upon him.

4 Since the Applicant was ready to appear before the Magistrate after cancellation of warrant and since there was reasonable apprehension in the mind of the Applicant that he might be put beyond the bars if he appeared before cancellation of warrant, the learned Magistrate should have considered the application on merits.

5 In my considered opinion, there is no law that the accused shall personally remain present for cancellation of warrant. If the lawyer makes an application for cancellation of warrant, the same needs to be considered on merits by the learned Magistrate without insisting the for appearance of the Applicant/accused. It is noted by this Court that many Writ Petitions are filed in this Court only because the learned Magistrate straight way take a view that warrant cannot be cancelled unless accused appears before the Court. The view taken by a few of the Magistrates particularly in the city of Bombay, in my opinion, is not correct. It is high time that this Court lets the Magistrate note that the appearance of the applicant/accused is not necessary when application for cancellation of warrant is made. In the circumstances, I pass the following order:-

- (I) The non-bailable warrant issued against the Applicant stands cancelled.
- (II) The Applicant shall appear before the Trial Court on next date of

hearing.

(III) The copy of this order shall be forwarded to the Chief Metropolitan Magistrate, Bombay for being circulated to all the Additional Chief Metropolitan Magistrate and Metropolitan Magistrate.

(IV) The Writ Petition stands disposed of.

( *M. L. TAHALIYANI* , J.)