



**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH**

**DATED THIS THE 30<sup>TH</sup> DAY OF OCTOBER, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR**

**CRIMINAL PETITION NO. 102887 OF 2023**

**BETWEEN:**

1. M/S. VENUS REMEDIES LTD.,  
51,52, INDL. AREA, PANCHAKULA,  
PIN-134112, HARYANA STATE,  
R/BY ITS MANAGING DIRECTOR-P2,  
SRI. PAVAN CHOUDHARY,  
AGED 59 YEARS, OCC. BUSINESS.
2. SRI. PAVAN CHOUDHARY S/O LATE H.D. CHOUDHARY,  
AGED ABOUT 59 YEARS, OCC. MANAGING DIRECTOR,  
R/O. HOUSE NO.1054, SECTOR 4, PANCHAKULA,  
HARYANA STATE-134109.
3. MRS. MANU W/O PAVAN CHOUDHARY,  
AGED ABOUT 55 YEARS, OCC. BUSINESS,  
R/O. HOUSE NO.1054, SECTOR 4, PANCHAKULA,  
HARYANA STATE-134109.
4. SRI. S. VIJAY KUMAR,  
PROPRIETOR OF M/S. MERRELL PHARMACEUTICALS CO.  
45/16, 'A', SURPENTINE ROAD,  
KUMATA PARK WEST, BANGALORE.

... PETITIONERS

(BY SRI. RAMACHANDRA A. MALI, ADVOCATE)

**AND:**

THE STATE OF KARNATAKA,  
R/BY DRUG INSPECTOR, BELAGAVI,  
DIST. BELAGAVI, NOW R/BY STATE PUBLIC PROSECUTOR,  
HIGH COURT OF KARNATAKA BUILDING,  
DHARWAD BENCH, DHARWAD.

... RESPONDENT

(BY SRI. P.N. HATTI, HCGP)





THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. SEEKING TO QUASH THE ORDER DATED 30.09.2023 AND DATED 11.10.2023 IN C.C. NO. 1125/2002 FOR OFFENCES UNDER SECTION 18(i)(a) AND 27(d) OF DRUGS AND COSMETIC ACT PASSED BY THE PRL. CIVIL JUDGE AND JMFC, NIPPANI AS THE SAME BEING ARBITRARY, ILLEGAL AND NOT SUSTAINABLE IN LAW IN SO FAR AS THE SAME RELATES TO PETITIONERS HEREIN/ACCUSED NO.1 TO 3.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

Learned High Court Government pleader is directed to take notice for respondent-State.

2. With the consent of both counsel, the matter is taken up for disposal.

3. The petitioners have sought for quashing of the order dated 30.09.2023 and 11.10.2023 passed in C.C.No.1125/2002 by the Principal Civil Judge and JMFC, Nippani.

4. The petitioners are accused No.1 to 3 in C.C.No.1125/2002 facing trial for the offences punishable under Section 18(i)(a) and 27 (d) of Drugs and Cosmetics Act. The petitioners were granted bail and they faced trial. After conclusion of the trial, the statements of the accused



came to be recorded under Section 313 of Criminal Procedure Code (hereinafter referred as to "Cr.P.C." for brevity). Thereafter, the matter was posted for arguments. Thereafter, the matter was taken on several dates. On 30.09.2023, the petitioners and accused No.4 remained absent and the learned Magistrate has ordered issuance of NBW against the accused Nos.1 to 4. Thereafter on application case came to be advanced and learned counsel for the accused has filed application under Section 70(2) seeking recall of NBW issued against accused Nos.1 to 4 without their presence. The said application came to be rejected by order dated 11.10.2023. The said order dated 30.09.2023 and 11.10.2023 are challenged in this petition.

5. Heard the arguments of learned counsel for the petitioners and learned High Court Government Pleader for respondent-State.

6. Learned counsel for the petitioners would contend that the petitioners and accused No.4 are co-operated with the Court and they kept themselves present on the dates of hearing when their presence is required.



He further submits that when matter is posted for arguments and thereafter matter being adjourned on several dates for 48 occasions and noting the absence of the petitioners and accused No.4 on 30.09.2023 the NBW came to be issued to accused Nos.1 to 4. He further submits that the case was posted on 29.09.2023 and on that date exemption petition was filed and it was allowed and the case was adjourned to very next day. He further submitted that there was a call for "Karnataka Bandh" on 29.09.2023. Since the petitioners were the resident of Harayan State and they could not kept present on 30.09.2023. The learned counsel for the petitioners filed an application seeking recall of NBW issued as per order dated 30.09.2023, placing reliance on the decision of the Hon'ble Apex Court in **SATENDER KUMAR ANTIL VS. CENTRAL BUREAU OF INVESTIGATION AND ANOTHER** reported in **2022 LIVE LAW (SC) 577** and **ARUN KUMAR N. CHATURVEDI VS. STATE OF MAHARASHTRA**, in Writ Petition No. 4429/2013 date of disposal 24.12.2013, in spite of that their application



seeking recall of NBW came to be rejected by learned Magistrate. He submits that as per the directions issued by the Hon'ble Apex Court in **SATENDER KUMAR ANTIL** case NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing. The impugned order came to be passed merely on the ground that the petitioners were not kept present on the date of passing of order on the application seeking recall of NBW. He contends that the impugned orders are therefore, required to be quashed. With this, he prays to allow the petition.

7. Per contra, learned High Court Government Pleader would contend that the criminal case is registered against the petitioners and another is of the year 2002 and their presence is required for pronouncement of the judgment as noted in the impinged order. Due to the absence of the petitioners, learned Magistrate could not



pronounce judgment. With this, he supported the reasons assigned in passing the impugned order.

8. The petitioners were on bail in C.C.No.1125/2022. The trial in the said case is concluded and statement of the accused came to be recorded under Section 313 of Cr.P.C. Thereafter, the case came to be adjourned for more than 48 dates for arguments.

9. Learned counsel for the petitioners submits that the accused persons have submitted their written arguments on 13.06.2022. Thereafter the matter was adjourned for reply. Instead of submitting written arguments by the prosecution and accused persons the learned magistrate would not proceed to post the case for judgment and proceeded to adjourn the case several times. Accused No.1 is the company, accused No.2 is the Managing director of the accused No.1-Company, accused No.3 is the Joint Managing director of accused No.1-Company. Accused Nos.2 and 3 are resident of Harayana State. The accused Nos.1 to 3 did not keep themselves present before the learned Magistrate on 29.09.2023 due



to "Karnataka Bandh". The case came to be adjourned to the very next day i.e. 30.09.2023 asking the petitioners to be kept present on that day. Since the petitioners are resident of Harayana State, they could not keep themselves present on that day and learned Magistrate has issued NBW against them.

10. In the application filed by the petitioners seeking recall of NBW, they have undertaken to appear before the Court if sufficient time is granted to them in para 13 of their application. The application of the petitioners seeking recall of NBW came to be rejected on the ground that they are not physically kept present. The Hon'ble Apex Court in **SATENDER KUMAR ANTIL** case (supra) as held that the NBW may be cancelled or converted into a bailable warrant/summons without insisting physical appearance of accused, if such an application is moved on behalf of the accused before execution of the NBW on an undertaking of the accused to appear physically on the next date/s of hearing.



11. The learned Magistrate erred in rejecting the application seeking recall of NBW only ground that they were not kept present either physically or in Video Conference and no affidavit is filed undertaking to appear on the next date on hearing. The application itself contains an undertaking of the accused persons that they will appear if sufficient time is given to them in para 13 of their application. The Hon'ble Apex Court again taken up **SATENDER KUMAR ANTIL** case for non-compliance of the directions (2023 Live Law (SC) 233) wherein it observed as under:

*(ii) Counsels have produced before us a bunch of orders passed in breach of the judgment in the case of Satender Kumar Antil Vs. CBI & Anr. only as samples to show how at the ground level despite almost 10 months passing, there are a number of aberrations. It is not as if these judgments have not been brought to the notice of the trial Courts and in fact have even been noted, yet orders are being passed which have a dual ramification i.e., sending people to custody where they are not required to be so sent and creating further litigation by requiring the aggrieved parties to move further. This is something which cannot be countenanced and in our*





*view, it is the duty of the High Courts to ensure that the subordinate judiciary under their supervision follows the law of the land. If such orders are being passed by some Magistrates, it may even require judicial work to be withdrawn and those Magistrates to be sent to the judicial academies for upgradation of their skills for some time.*

12. As per the observations made by the learned Magistrate, the presence of the petitioner/accused Nos.1 to 3 and another accused is required for pronouncement of the judgment. Learned counsel for the petitioners/accused Nos.1 to 3 submits that the petitioners will be kept present on the date that may be fixed by this Court.

13. In view of the above, the following:

**ORDER**

The petition is allowed.

Both orders dated 30.09.2023 and 11.10.2023 passed in C.C.No.1125/2002 by Principal Civil Judge, JMFC, Nipani are quashed.



Petitioners/accused Nos.1 to 3 are directed to be kept  
present before the learned Magistrate in  
C.C.No.1125/2002 on 20.11.2023 without fail.

**Sd/-**  
**JUDGE**

AC  
CT:BCK  
List No.: 1 Sl No.: 14