

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CrI.M.C.No.863/2021

Judgment reserved on :19.03.2021

Date of decision : 26.03.2021

ARUN KUMAR PARIHAR

..... Petitioner

Through: Mr. Mohit Mathur, Sr. Adv.
with Mr. Hitaish Chauhan, Mr.
Prateek Gautam, Mr. Mayank
Sharma, Advocates

versus

STATE (GOVT NCTD)

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP
for State.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The petitioner vide the present petition seeks the quashing of the order dated 05.01.2021 as well as the non-bailable warrants issued against him vide order dated 05.01.2021 by the Court of the learned CMM, PHC in FIR No.147/2020, PS EOW, under Sections 406/420/120B of the Indian Penal Code, 1860, whilst seeking quashing of order dated 02.03.2021, vide which the prayer made by the petitioner herein before the learned trial Court seeking cancellation of non-bailable warrants issued vide order dated 05.01.2021 was declined. The petitioner has also sought the quashing of an order dated

03.03.2021 of the learned CMM, PHC along with the process under Section 82 of the Cr.PC, 1973 issued against the petitioner in the said FIR by the learned trial Court.

2. At the outset, it is essential to observe that as regards the prayer made by the petitioner seeking quashing of the proceedings initiated vide order dated 03.03.2021, under Section 82 of the Cr.PC, 1973 in as much as the FIR in the instant case is registered under Sections 406/420/120B of the Indian Penal Code, 1860, the said provisions of law sought to be invoked by the Investigating Agency do not fall within the ambit of Section 82(4) of the Cr.PC, 1973 and thus the applicant cannot be declared a Proclaimed Offender thereunder in view of the verdict of this Court in in **Manoj Tandon Vs. State** in Crl.M.C.1961/2020, dated 25.11.2020 whereby there is a reference made to the verdict of this Court in **Sanjay Bhandari vs. State** in Crl.Rev.Pet.No.223/2018, a verdict dated 31.07.2018, the verdict of the Hon'ble High Court of Rajasthan in **Rishabh Sethi vs. State of Rajasthan and Ors.** in Petition No.5767/2017.

3. In view thereof, the order dated 03.03.2021 of the learned trial Court directing the issuance of process under Section 82 of the Cr.PC, 1973 against the petitioner in FIR No.147/2020, PS EOW, under Sections 406/420/120B of the Indian Penal Code, 1860 is quashed.

4. The petitioner vide the present petition has submitted that the FIR in question is maliciously instituted with motivated reasons to extort the petitioner though the matter relates to a civil commercial dispute and that arbitration proceedings in relation to the dispute are also pending. The FIR in the instant case has been lodged on the

complaint of Mr. Anuj Tyagi, Authorized Representative of M/s Saya Cementation Ltd. wherein the complainant stated that Mr. Amit Mavi, Director of M/s Alisha Infratech Pvt. Ltd. and M/s Baya Weaver Ltd. had informed them that he was developing a project in Sector-129, Jaypee Greens Wish Town, Noida, UP in the name and style of 'Oh My God' but that he had been unable to complete the project which had been launched in the year 2013 and that till that time not more than 5% of the work including the structure had been done at the site and thus Mr. Amit Mavi proposed to transfer the shareholding of these two companies to the complainant company. A sum of Rs.350 crores was taken by the complainant as a loan from India Infoline Finance Ltd. (IIFL) and the Share Purchase Agreement dated 30.03.2020 was executed between the complainant and the accused for a total consideration of Rs.3.13 crores and the demand drafts of Rs.11.58 crores towards settlement of various litigations against Amit Mavi.

5. It has been submitted through the status report that has been submitted on behalf of the State that the given amount was paid by the complainant to the accused and after receipt of the same, a further payment of Rs.5.31 crores was made in lieu of various outstanding payments which was not part of the share holder agreement but in the interest of the project the complainant made additional payment to secure the original signed copies of various documents which Mr. Amit Mavi was required to deliver as Share Purchase Agreement, transfer slip of Demat share, transfer certificate of Alisa share, Transfer Deed of Bayaweaver Ltd. and receipts of the amount so paid in original but the accused persons evaded the delivery of documents

even after receipt of the entire consideration and refused to hand over the same.

6. As per the status report, another representation was also made by Mr. Anurag Solanki, Authorized Representative of India Infoline Finance Ltd. in relation to the embezzlement of Rs.9.33 crore out of Rs.11.58 crores deposited in the Nainital Bank Ltd. for the purpose of payments to customers and an FIR No.147/2020, PS EOW, under Sections 406/420/120B of the Indian Penal Code, 1860 was registered.

7. As per the status report through the Share Purchase Agreements 100% of the shareholding was to be transferred by the accused in favour of the complainant which meant the complainant would take over the company of the accused along with their liabilities and thus had made the payment of Rs.3.13 crores and Rs.5 lacs on 14.08.2020. As per the status report on the record, as per the Share Purchase Agreement apart from the share purchase consideration, the buyers were required to place a sum of Rs.11.58 crores in a separate current account no.1201030000000010 in Nainital Bank, where Mr. Anurag Solanki, representative of India Infoline Finance Ltd. could be a co-signatory for settling the clients/ customers of the company of the accused and on 18.08.2020, a request was made by Mr. Amit Mavi and Mr. Anurag Solanki jointly to the bank for issuance of DDs to various creditors for an amount of Rs.10.42 crores and on 18.08.2020, another authorization letter for the signatory was submitted to the bank by the accused company wherein Mr. Amit Mavi was authorized to sign all cheques of the said account and it was further mentioned that any instruction in regard to this account of Mr. Anurag Solanki would

not be entertained and this was done without intimation/ consent of Mr. Anurag Solanki. The applicant herein was stated to be one of the directors as well as signatory of the two beneficiary i.e. companies/ bank accounts.

8. The status report indicates that the investigation was conducted by the Investigating Agency on 29.10.2020. It is stated as per para 8 of the status report to the effect:

“8. That, during further investigation on 29/10/20, Arun Kumar, Director of the alleged companies M/ s Alisa Infratech (P) Ltd & M/s Baya Weaver Ltd was examined wherein he stated that Amit Mavi is the Chairman of the company and he had carried out the complete deal with the complainant company. He further evaded other queries raised during investigation and stated that he would submit a detailed reply in due course. He further stated that a consolidated reply will also be submitted by Amit Mavi on behalf of all the directors.”

9. Vide para 9, it was submitted by the State through the status report as under:

“9. That, during further investigation on 03/11/20 unsigned replies from Arun Kumar & Amit Mavi was received through Speed Post. Further another reply from Rohtash Sharma was also received which was on similar lines to the reply filed by Amit Mavi,

However they have answered the queries (individually but similar) in the following manner:

S.No.	Query Raised	Answer from Alleged	Outcome of Investigation
1	When the complete payment of Share	The complainant has to clear all creditors as per	As per documents on record the complainant in

	Purchase consideration (Rs.3.13 Crore & 5 Lakh) was made by the complainant, why are the requisite documents withheld by your company	books of account of the company and replace all the cheques as per Schedule E which is approx. 2000 cheques. As these obligations are complied with, we will be happy to transfer the shares and release the necessary documentation to the buyers.	order to maintain the accounting, transferred the funds to the escrow accounts of Bayaweaver and Alisa for making the required payment of certain liabilities. There are certain more liabilities for which nothing needs to be transferred to Alleged. All the liabilities have been taken over and shall be handled in accordance with law gradually. None of the balance payments is required to be made to Amit Mavi.
2.	Are there any other dues, which are required to be paid by the complainant, in compliance of Share Purchase Agreement. If yes, please provide documents in	Received approx. Rs.295 crore and there is still outstanding of Rs.92 crore for Bayaweaver Ltd & Rs.77 crore for Alisa Infratech Pvt. Ltd.	As per SPA the complainant agreed to purchase both Alisa Infratech Pvt. Ltd and Bayaweaver Ltd at a consideration of Rs.3.13 Cr and Rs.5 Lakh

	support.		respectively. There was one other condition of placing a sum of Rs.11.58 crore in a separate account tin Nainital Bank. These payments were duly made by the complainant. No other balance payment is required to be made to the alleged.
3.	The amount of Rs.11.58 Crore was deposited by complainant in Nainital Bank for a specific purpose of client's payment, then why was the payment to the tune of Rs.9.3 crore made to other entities.	Query not answered, rather giving vague answer.	Out of Rs.11.58 Crore, Rs.9 crore approx. have been transferred to the entities other than those mentioned in the client list.
4.	As per Share Purchase Agreement, the account at Nainital Bank was required to have Sh. Anurag Solanki (IIFL) as	There was a loan from IIFL on the alleged company, which was fully paid by 31 st March, 2020, accordingly there was no need for their	There was no link whatsoever between the paying off of loan from IIFL and operating the Nainital Bank singly by Amit

	<i>co-signatory for settling the clients/ consumer. Then why was he removed as co-signatory, after receipt of Rs.11.58 Crore. Plz explain.</i>	<i>representative Anurag Solanki to continue as co-signatory.</i>	<i>Mavi, as the amount (Rs.11.58 Crore) in the said account was deposited by complainant for the purpose of client's payment.</i>
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10. It was thus submitted on behalf of the State through the status report as also orally submitted that the reply received from the petitioner had vague answers and he did not disclose anything about siphoning of funds to the tune of Rs.9 crores and thus his custodial interrogation was required to unveil the conspiracy hatched by them in siphoning of funds which were exclusively paid for making clients payments and that on 23.12.2020, his office was raided, which was found to be already vacated by the accused persons whereafter his house in Ghaziabad was raided where the mother of Arun Kumar was there who informed that the petitioner had gone out with his family and she however refused to disclose any whereabouts of the petitioner and that the petitioner had absconded and thereafter on 05.01.2021, non-bailable warrants against the petitioner and two others were obtained and raids were conducted to arrest them whereafter, the proclamation under Section 82 of the Cr.PC, 1973 was issued by the learned CMM, returnable for 15.04.2021.

11. **Apparently, the status report submitted by the State dated 16.03.2021 under signatures of Mr. Nageen Kaushik, ACP, EOW, Delhi indicates clearly that the applicant had joined the**

investigation on 29.10.2020 and that too at Delhi. Merely because he is alleged to have evaded queries put by the Investigating Agency, it cannot be claimed by the State that the petitioner was evading the process of law as rightly contended on behalf of the petitioner.

12. Though, the prayers made by the petitioner were vehemently opposed on behalf of the State submitting to the effect that the petitioner had not cooperated in the investigation by not answering the questions put by the IO appropriately though he had joined the same.

13. Reliance was placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Inder Mohan Goswami and Ors. Vs. State of Uttaranchal and Ors.*** in CrI.A.1392/2007, a verdict dated 09.10.2007 to contend to the effect that personal liberty is paramount and that the issuance of a warrant whether bailable or non-bailable is entirely in the discretion of the Court nevertheless that discretion has to be exercised with care in as much as the issuance of non-bailable warrants involves interference with personal liberty and the Courts have to be extremely careful before issuing non-bailable warrants which can be issued to bring a person to Court when summons or bailable warrants are unlikely to have the desired result and can be issued 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.***

14. The observations of the Hon'ble Supreme Court in paras 48 to 53 thereof have essentially to be adverted to and are reproduced as under:

“48. The issuance of non-bailable warrants involves interference with personal liberty. Arrest and imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants.

49. 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 civilized 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

Non-bailable warrant should be issued to bring a person to court when summons of 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.*

50. 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.

51. 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 courts 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.

52. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

53. The Court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant.”

15. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in **State through C.B.I. Vs. Dawood Ibrahim Kaskar and Ors.**, a verdict dated 07.05.1997 with reliance placed on paras 13 to 26 of the said verdict, which read to the effect:

“13. The moot question that now requires to be answered is whether a Court can issue a warrant to apprehend a

person during investigation for his production before police in aid of the Investigating Agency. While Mr. Ashok Desai, the learned Attorney General who appeared on behalf of CBI, submitted that Section 73 coupled with Section 167 of the Code bestowed upon the Court such power, Mr. Kapil Sibal, who appeared as amicus curie (the respondents did not appear inspite of publication of notice in newspaper) submitted that Court has no such power. To appreciate the steps of reasoning of the learned counsel for their respective stands it will be necessary to refer to the relevant provision of the Code and TADA relating to issuance of processes.

14. Chapter VI of the Code which is captioned as 'processes to compel appearance' consists of four parts part A relates to Summons; part B to warrant of arrest; part C to proclamation and attachment and part D to other rules regarding processes. Part B, with which we are primarily concerned in these appeals, has in its fold Section 70 to 81. Section 70 speaks of the form in which the warrant to arrest a person is to be issued by the Court and of its durational validity. Section 71 empowers the Court issuing the warrant to direct the officer who is to execute the warrant, to release that person on terms and condition as provided therein. Section 72 provides that a warrant shall ordinarily be directed to one or more police officers but if its immediate execution is necessary and no police officer is immediately available it may be directed to any other person for execution. Section 73 which is required to be interpreted in these appeals, read as under:

73(1) The Chief Judicial Magistrate of a Magistrate of the first class may direct a warrant to an person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable offence and is evading arrest.

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enter on, any land or other property under his charge.

15. Section 76 requires the police officer or other person, who executes the warrant to bring the person arrested before the Courts (unless he is released in terms of Section 71), within twenty four hours.

16. Section 82, appearing in part C empowers the Court to issue proclamation; and so far as it is relevant for our present purpose, read as under:

"82(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(emphasis supplied)

xxx

(2)xxx

(3)xxx

After issuing a proclamation in terms of the above provision, the Court may also order attachment of the property of the proclaimed person under Section 83; and even deprive him of his such property if he does not appear within the time prescribed under Section 85.

17. Chapter XVI relates to commencement of proceedings before Magistrates and Section 204 appearing therein enable a Magistrate, who takes cognizance of an offence, to issue process (summons/warrant) against the accused if he finds sufficient grounds to proceed against him.

18. Coming now to the relevant provisions of TADA, it may first refer to sub-section (3) of Section 8 relating to proclamation for and attachment of the property of a person accused of an offence punishable under TADA. Clause (a) of the above sub-section lays down that if upon a report in writing made by a police officer or an officer referred to in sub-section (1) of Section 7, any Designated Court has reason to believe that any person, who has committed an offence punishable under the Act or any rule made thereunder, has absconded or is concealing himself so that he may not be apprehended, such Court may, notwithstanding anything contained in Section 82 of the Code, publish a written proclamation requiring him to appear at a specified place and at a specified time not less than fifteen days but not more than thirty days for the date of publication of such proclamation; and sub-section (3)(b) thereof entitles the Court issuing the proclamation to order attachment of property belonging to the proclaimed offender and then proceed in accordance with Section 83 to 85 of the Code. For all intents and purpose, therefore, sub-section 8(3) of TADA seeks to achieve the same object as part C of Chapter VI does, namely to compel appearance of the accused. The other section to which reference need be made is Section 20 which makes the provisions of the Code applicable to the proceeding under TADA, subject to the modification envisaged therein.

19. The contention of Mr. Desai was that though in exercise of its power under Section 41 of the Code a police officer may without an order from a Magistrate and without a warrant arrest a person who is concerned in any cognizable offence or against whom a reasonable complaint has been made, or a credible information has been received or a reasonable suspicion exists, of his having been so concerned, under the Code the police has no power of its own to compel his appearance if he

evades the arrest. It is in that context, Mr. Desai argued, that the Court has been given the power under Section 73 to issue warrant of arrest for apprehension of such a person; and, thereafter, if need be, to issue proclamation and pass order for attachment of his properties. In joining issues, Mr. Sibal urged that the scheme of the Code is that the police has complete control of the investigation and is not aided by any judicial authority. Once the investigation culminates in the police report under Section 173(2) that the Court steps in by taking cognizance thereupon and issuing summons or warrant under Section 204 against the person arraigned. According to Mr. Sibal, in the scheme of the Code it is unthinkable that the police, while investigating under Chapter XII is entitled to seek the help of a Magistrate for the purpose of issuance of a warrant of arrest in aid of investigation. As regards Section 73, Mr. Sibal's argument was that in the scheme of part B of Chapter VI that section only lays down a procedure to enable a Court to execute a warrant already issued under Section 204 but does not confer any right to issue a warrant, much less during investigation.

20. At this stage it is pertinent to mention that under the old Code the corresponding provision was Section 78; and while recommending its amendment the Law Commission in its 41st report stated, *inter alia*:

"6.8 Section 78 at present confers a power on the District Magistrate or Sub-Divisional Magistrate to issue a special type of "warrant to a land-holder, farmer or manager of land within the district of sub-division for the arrest of an escaped convict, proclaimed offender or person who has been accused of a non-bailable offence and who has eluded pursuit". Although the power is infrequently exercised, there appear to be no objection to conferring it on all Magistrates of the first class and all

21. Apart from the above observations of the Law Commission, from a bare perusal of the Section (quoted earlier) it is manifest that it confers a power upon the class of Magistrates mentioned therein to issue warrant for arrest of three classes of person, namely, i) escaped convict, ii) a proclaimed offender and iii) a person who is accused of a non-bailable offence and is evading arrest. If the contention of Mr. Sibal that Section 204 of the Code is the sole repository of the Magistrate's power to issue warrant and the various Sections of part 'B' of Chapter VI including Section 73 only lay down the mode and manner of execution of such warrant a Magistrate referred to under Section 73 could not - and would not - have been empowered to issue warrant of arrest for apprehension of an escaped convict, for such a person can not come within the purview of Section 204 as it relates to the initiation of the proceeding and not to a stage after a person has been convicted on conclusion thereof.

22. That Section 73 confers a power upon a Magistrate to issue a warrant and that it can be exercised by him during investigation also, can be best understood with reference to Section 155 of the Code. As already noticed under this Section a police officer can investigate into a non cognizable case with the order of a Magistrate and may exercise the same powers in respect of the investigation which he may exercise in a cognizable case, except that he cannot arrest without warrant. If with the order of a Magistrate the police starts investigation into a non- cognizable and non-bailable offence, (like Sections 466 or 467 (Part I) of the Indian Penal Code) and if during investigation the Investigating Officer intends to arrest the person accused of the offence he has to seek for and obtain a warrant of arrest from the Magistrate. If the accused evade the arrest, the only course left open to the Investigating Officer to ensure his presence would be to ask the Magistrate to invoke his

powers under Section 73 and thereafter those relating to proclamation and attachment. In such an eventuality, the Magistrate can legitimately exercise his power under Section 73, for the person to be apprehended is 'accused of a non-bailable offence and is evading arrest.'

23. Another factor which clearly indicates that Section 73 of the Code gives a power to the Magistrate to issue warrant of arrest and that too during investigation is evident from the provisions of part 'C' of Chapter VI of the Code, which we have earlier adverted to. Needless to say the provisions of proclamation and attachment as envisaged therein is to compel the appearance of a person who is evading arrest. Now, the power of issuing a proclamation under Section 82 (quoted earlier) can be exercised by a Court only in respect of a person 'against whom a warrant has been issued by it'. In other words, unless the Court issues a warrant the provisions of Section 82, and the other Sections that follow in that part, cannot be invoked in a situation where inspite of its best efforts the police cannot arrest a person under Section 41. Resultantly, if it has to take the coercive measures for the apprehension of such a person it has to approach the Court to issue warrant of arrest under Section 73; and if need be to invoke the provisions of part 'C' of Chapter VI. [Section 8 (3) in case the person is accused of an offence under TADA]

24. Lastly, we may refer to Section 90, which appears in part 'D' of Chapter VI of the Code and expressly states that the provisions contained in the Chapter relating to a summon and warrant, and their issue, service and execution shall, so far as may be, apply to every summon and every warrants of arrest issued under the Code. Therefore, when a Court issues a warrant of arrest, say under Section 155 of the Code, any steps that it may have to subsequently take relating to that warrant of arrest can only be under Chapter VI.

25. Now that we have found that Section 73 of the Code is of general application and that in course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend, inter alia, a person who is accused of a non-bailable offence and is evading arrest, we need answer the related question as to whether such issuance of warrant can be for his production before the police in aid of investigation. It cannot be gainsaid that a Magistrate plays, not infrequently, a role during investigation, in that, on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness, or takes or witnesses the taking of specimen handwritings etc. However, in performing such or similar functions the Magistrate does not exercise judicial discretion like while dealing with an accused of a non-bailable offence who is produced before him pursuant to a warrant of arrest issued under Section 73. On such production, the Court may either release him on bail under Section 439 or authorise his detention in custody (either police or judicial) under Section 167 of the Code. Whether the Magistrate, on being moved by the Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with Section 167(3) of the Code. Since warrant is and can be issued for appearance before the Court only and not before the police and since authorisation for detention in police custody is neither to be given as a matter of course nor on the mere asking of the police, but only after exercise of judicial discretion based on materials placed before him, Mr. Desai was not absolutely right in his submission that warrant of arrest under Section 73 of the Code could be issued by the Courts solely for the production of the accused before the police in aid of investigation.

26. On the conclusions as above we allow these appeals, set aside the impugned order and direct the Designated Court to dispose of the three miscellaneous applications filed by C.B.I. in accordance with law and in the light of the observations made herein before.”

to contend to the effect that a warrant of arrest under Section 73 of the Cr.PC,1973 cannot be issued by the Courts solely for the production of the accused before the police **in aid of investigation**.

16. Reliance was also placed on the verdict of the High Court of Punjab and Haryana in ***Gurjeet Singh Johar Vs. State of Punjab and Haryana*** in CRM-M No.47872/2019 (O&M), a verdict dated 08.11.2019 with specific reference to observations in paras 13 to 17 thereof, which read to the effect:

*“13. Still further, in case of judgment in the case of Dawood Ibrahim Kaskar (supra), the Supreme Court has dealt with the language of Section 73 of Cr.P.C., and has explained the situation in which the Magistrate can issue warrant of arrest. As observed above, although the bare language of the Section, read as it is, requires as a pre-condition; for the issuance of warrants by the Magistrate, only this much, that the person is evading the arrest, however, even this has been interpreted by the Supreme Court. It has been held by the Supreme Court that to arrest such a person, who is evading arrest, **the Magistrate has to exercise his discretion, in judicial manner and the Magistrate cannot issue warrants of arrest only for the purpose of the arrest, and for the aid and assistance to the police officer.***

14. This court also finds that more often then not, the police use the power of the Magistrate to issue warrant of arrest against an accused, only as a tool to avoid its

responsibility to carry out the investigation to the logical end; and only for the purpose of getting such an accused declared as proclaimed offender. This methodology is normally adopted by the police just to get rid of the responsibility of putting a report before the Magistrate qua investigation, which otherwise is a mandate of law cast upon the police, or even to avoid arresting an accused in inconvenient cases or inconvenient circumstances. As a result, lots of persons are got declared as proclaimed offenders; and forgotten altogether by the police thereafter. Hence, as observed above, this court is also of the view that before the Magistrate/court has taken cognizance of any offence, the power of issuance of warrants of arrest under any provision of Cr.P.C., on an application of a police officer, cannot be invoked by the Magistrate as a routine matter. Needless to say, at the cost of repetition; that under the provisions of Cr. P. C. itself, the police have power to arrest a person without warrant even by following such a person at any place in India. Therefore, it is clear that only for arresting a person; the police do not require any warrant as such. Hence, it would not lie in the mouth of the police to allege before the Magistrate, without there being any specific reasons or any barrier in their way, that the accused is evading arrest. During investigation; even if there is some specific legal or factual obstacle or barrier, which makes the arrest without warrant impossible, and if the police intend to seek warrant of arrest from the Magistrate for such arrest, under any provision of the Cr.P.C., the police are required to specify the obstacle, which the warrant issued by the court would remove and because of which such obstacle or the barrier in way of the police; the accused was succeeding in evading his arrest. Unless, there is any specific obstacle; because of which the police were not able to arrest; and which could not be removed by the police on their own and without the aid of the warrant of the court, the issuance of warrant of arrest by the Magistrate, only on

assertion of the police that the accused was evading arrest, would be only a routine exercise, and would be only for the aid of the investigating officer, which could not be done by the Magistrate, as has been held by the Supreme Court in the case of Dawood Ibrahim Kaskar (supra).

15. Coming to the facts of the present case, undisputedly, the petitioner has not been arrested by the police despite having power to arrest him without warrant. Therefore, there is nothing on record of the present petition; showing whether the investigating officer was ever satisfied qua the requirement of the petitioner to be arrested or not. This court is presented with only an application moved by the police officer before the Magistrate; seeking issuance of warrant against the petitioner. The said application is silent qua any reason, which requires assistance from the court for arresting the petitioner. The application does not specify whatever obstacles, which were preventing the investigating officer from arresting the accused/petitioner without the aid of the warrant. Not only this, no reason, whatsoever, has been spelt out in the application, even qua the requirements of arrest as mentioned in Section 41 Cr.P.C, to justify arrest of the petitioner, except to say that the petitioner is evading arrest. It is upon this application that the impugned warrants of arrest have been issued against the petitioner.

16. By perusing the warrants issued by the Magistrate also, it is quite clear that the Magistrate has issued the warrant only to enlarge the effort of the police qua its investigation; as the reason for issuing warrant of arrest. The only other reason mentioned is that there is no stay of arrest qua the petitioner by any other court. Although the Magistrate may not be required to record any detailed reasons as such for issuing warrants, however, this court is of the view that none of these reasons given in this case is germane to the provisions under which the Magistrate is required to exercise his

powers to issue warrants of arrest. There is nothing, either in the order passed by the Magistrate, from which it can be discernible that the Magistrate had some reasons or material to justify the discretion exercised by him.

17. Accordingly, this court finds that impugned warrants issued by the Magistrate cannot be sustained. Hence, the present petition is partly allowed. The impugned warrants of arrest and consequent orders impugned in the present petition are quashed.”

to contend to similar effect that the issuance of warrants by the Magistrate to enlarge the effort of the police qua its investigation cannot be resorted to.

17. Reliance was also placed on behalf of the petitioner on the verdict of this Court in ***Prem Cashew Industries and Ors. Vs. Zen Pareo*** in Crl.Rev.Pet. 55/1999, a verdict dated 22.09.2000 to contend to the effect that non-bailable warrants ought not to have been issued by the learned trial Court vide the impugned order dated 05.01.2021.

18. Reliance was also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in ***Vikas Vs. State of Rajasthan***, in Crl.A.1190/2013, a verdict dated 16.08.2013 also to contend to the effect that at the first instance, the Court should issue summon or bailable warrants failing which, a non-bailable warrants be issued.

19. On behalf of the State it was submitted by the learned APP for the State that the petitioner as per contents of the application dated 05.01.2021 of the Inspector Amit Choudhary, Sec-V/EOW was absconding and thus non-bailable warrants were required.

20. As submitted by the petitioner, a notice had been sent to the petitioner under Section 41A of the Cr.PC, 1973 dated 22.10.2020 and he joined the investigation at EOW on 29.10.2020.

21. Rather, the status report that has been submitted by the State vide para 8 thereof states categorically that the petitioner, the Director of the accused companies M/s Alisha Infratech Pvt. Ltd. and M/s Baya Weaver Ltd. had been examined wherein he had stated that Mr. Amit Mavi was the Chairman of the company which had carried out the complete deal with the complainant company and Mr. Arun Kumar, the present petitioner had evaded other queries raised during the investigation and stated that he would submit the detailed reply in due course and a consolidated reply would also be submitted by Mr. Amit Mavi on behalf of all directors, whereafter on 03.11.2020, unsigned replies from Mr. Arun Kuma and Mr. Amit Mavi were received and thus it becomes apparent from the response to the queries raised by the Investigating Agency as depicted in the table submitted through the status report as adverted to hereinabove itself make it apparent that the petitioner had joined the investigation and was not absconding and that the petitioner according to the Investigating Agency did not give the requisite desired answers to the Investigating Agency, which can be no ground *per se* for issuance of non-bailable warrants against the applicant in as much as every accused is entitled to the right to silence to prevent self-incrimination in terms of Article 20(3) of the Constitution of India.

22. In view thereof, the present petition is allowed and the non-bailable warrants ordered against the petitioner vide order dated

05.01.2021 by the Court of the learned CMM, PHC as well as the order dated 02.03.2021 declining the prayer of the applicant seeking cancellation of non-bailable warrants of the learned CMM, PHC in FIR No.147/2020, PS EOW, under Sections 406/420/120B of the Indian Penal Code, 1860 are set aside.

23. The petition is disposed of accordingly.

ANU MALHOTRA, J.

MARCH 26, 2021/vm

