

Order below Exhibit-1

In the matter at hand, the Accused is non traceable since the charge sheet has been filed. Accused could not be found and his presence could not be secured even after issuance of processes. On issuance of processes through this Court, police agencies were unable to trace the accused. Summons, warrants which remained unserved have been taken on record of this case. Notices were issued to the surety of the accused, who has also been discharged from the bond in the matter since he was unable to locate the accused despite attempts. This court has issued summons and warrants to the Accused, which returned with endorsements such as “address incomplete/address improper/wrong address/said person has never resided here”. It is pertinent to note that these processes were issued on the same address as was provided in the police papers and further, police have not provided any copy of the identity proof the Accused along with the said papers.

Further, it is germane to note that on the last occasion this court had issued a direction to the concerned police station vide letter of this court carrying Outward Number 12-15/2022, dated 25/07/2022, in which Police officials were directed to execute the processes and file the affidavit in that regard. Said processes were returned to this court with the affidavit of the Police Officer stating that Accused could not be found even after diligently searching for him. Even after such affidavit and the unserved process, this court had issued a letter (carrying Outward Number 167-170/2022, Dated 05/08/2022) to the police station asking them if they want to pursue any other procedure against the Accused to which this court has not received any reply as on date.

This Court is of the opinion that while courts do have a duty to secure the presence of accused before the court, the prosecution and police agency have a binding duty as well to ensure the presence of the accused before the court. In this case, despite many attempts, the police agency has failed to secure the presence of accused after the charge sheet has been filed against the said accused. This Court believes that there is no immediate prospect of the arrest of the accused.

Accused is charged with the offence under Section 66 (1)(b) of the Gujarat Prohibition Act, 1949. Case in hand is a summons triable case and came to be filed by filing of chargesheet. Looking into the record of the case as well as the facts and circumstances, it is apparent that the said case cannot be proceeded without immense further delay. In

such a scenario, stopping of proceedings against the accused may or may not affect the justice delivery system but continuation of the same would undoubtedly hamper the justice delivery system and would be prejudicial to the public resources. Provisions with respect to stopping of proceedings have been given under section 258 of Code of Criminal Procedure, verbatim reproduction of which is necessary:

“Section 258: Power to stop proceedings in certain cases

In any summons case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.”

It is the duty of this Court to secure the ends of justice and to ensure that no stakeholder of the justice delivery system gets prejudiced by the decision of the Court. Stopping of proceedings does not have the effect of permanent closing of the case, Magistrate can always revive the case after recording the reasons, as held by the Hon’ble Supreme Court in the case of *Renuka v. State of Karnataka & Anr*¹. Thus, looking into the **peculiar situation of this case**, this Court pass the following order.

Order

Case against the accused is hereby stopped as per the provisions of Section 258 of the Code of Criminal Procedure. Further, to cause no prejudice to the prosecution and to secure the ends of justice, this Court hereby gives prosecution all the right to apply for the revival of the case as and when the accused gets arrested. This Court orders issuance of non-bailable warrant against the accused, which shall remain in force till the time the accused gets arrested.

Date: 13/08/2022

(Karn Ajit Marwaha)

Place: Surat

7th Additional Judicial Magistrate First Class,
Surat
GJ01558

¹ 2009 (14) SCC 345

