

In Re: Anant Shivaji

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Court : Mumbai

Decided On : Oct-17-1907

Reported in : (1907)9BOMLR1285

Judge : Chandavarkar and ;Knight, JJ.

Appeal No. : Criminal Application for Revision 232 of 1907

Appellant : In Re: Anant Shivaji

Judgement :

Chandavarkar, J.

1. We accept the Magistrate's statement that the application made to him by the Pleader of the applicant for the cancellation of the surety bond was made at the time of the rising of the Court. Whether that means during or after the Court hours is not clear; but if it was after Court hours it was competent for the Magistrate to decline to receive the application then. Instead of that the Magistrate received the application; it was duly filed as presented during Court hours and the Magistrate made an endorsement of the presentation over his signature. After that it was not open to the Magistrate to treat the application as one not duly presented. After it had been received and taken as presented there was no option left to the Magistrate, but to act under Section 502 of the Criminal Procedure Code. He was bound to issue a warrant for the arrest of the accused. The District Magistrate acting under his appellate powers has indeed observed that though the Magistrate

received the application yet he did not hear it on its merits there but intimated to the applicant's pleader that he would hear him the next day; that as the pleader failed to appear the next day, the Magistrate was right in rejecting the application. This view of the District Magistrate is plainly contrary to Section 502. When a surety applies for the cancellation of his bond there is no such thing as hearing the application on the merits. The presentation of the application itself imposes upon the Magistrate the duty of issuing a warrant for the arrest of the accused. Accordingly in the present case the pleader was not bound to appear the next day and his failure to appear or the failure of his client to appear could not deprive the latter of his right to treat the bond as cancelled. The order under revision must be set aside and the applicant must have the sum of Rs, 1000, if paid by him, refunded to him.

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