



The order does not appear to be an abuse of the process of Court. The applicant was on notice since **27.10.2014** and instead of appearing before the learned Addl. District Judge to contest whatever issue was before the Court, has invoked inherent powers of this Court to avoid appearance before the Court of Addl. Sessions Judge. By setting aside the impugned order, the maximum benefit to the applicant shall be that his application for condonation of appearance before Additional Session Judge would be revived. He has, however, achieved his purpose by filing this Cr.Rev. Application and has not appeared before the Addl. District Judge for the last one year.

I have heard learned counsel for the applicant and he has not referred to the application on which the impugned order was passed. In the garb of impugned order the applicant has challenged maintainability of an application for cancellation of bail pending before the learned IInd Addl. District Judge Central-Karachi, who has granted the bail. The applicant was given notice on **27.10.2014**, he has not filed his reply to the said application. It is settle law that even the question of jurisdiction of a Court has to be first raised before the Court itself. Therefore, the grounds which have not been taken by the applicant before the trial Court, cannot be examined by the High Court in exercise of inherent powers under Section 561-A Cr.P.C to interfere in the proceedings of the Court below. It would amount to usurpation of power of lower Court.

The back ground of the instant Cr.Rev. Application is that the applicant is charged with an offence under **Section 489-F/420 PPC** and he had obtained pre-arrest bail without furnishing surety equivalent to the amount of the cheque which was bounced. The applicant even at the bail stage agreed to pay the entire amount of cheque which was a sum of Rs2,200,000/- on monthly installment of Rs.100,000/- per month as is evident from the following paragraph-6 of bail order dated **19.7.2014**.

6. After hearing the arguments of both sides, I have perused the record. During the Course of the argument the applicant/accused volunteered for decision on special oath to which the complainant conceded and so also the advocates for the parties. **The complainant and the applicant/accused alongwith their respective advocates moved a**

**joint statement wherein both the parties conceded to the payment by the applicant to the complainant in the sum of Rs.22,00,000/- on monthly installments of Rs.100,000/- per month and the complainant conceding to the confirmation of the bail application under the circumstances.** The complainant took special oath on Holy Quran which was accepted by the applicant/accused in the presence of the Court. The police file shows that the applicant/accused has joined the investigation. There is nothing mentioned in the police file as to hampering of investigation by the applicant/accused, therefore, the interim bail of the applicant/accused is confirmed on the same terms and conditions. The applicant/accused is directed to attend the Court where the challan will be submitted.

Soon after the aforesaid order, the applicant defaulted in fulfilling his commitment and thereby he is guilty of violating the undertaking given by him before the learned A.D.J for obtaining order of confirmation of bail before arrest. The applicant is playing with the complainant of FIR No.239/2014 as well as with the Court of law by unilaterally claiming that he had stopped payments of installments in spite of the order of Session Judge dated 19.7.2014 as according to him the case has not been withdrawn by the complainant. This was clear violation of the bail orders for an offence in which the accused is charged with forgery and dishonestly issuing cheque of Rs.22,00,000/-. The applicant before violating the bail order should have filed an application before the same Court for modification of the said order or breach of any understanding by the complainant. He became master of his own cause and declared that the bail order is not binding on him and when Court was informed of such violation he refused to attend the Court and after two months send an application for condonation of his appearance for indefinite period. The applicant in the above back ground without exhausting remedy has directly invoked inherent jurisdiction of this Court, that too, to obtain a relief which has not been even prayed before the Court of first instance.

Therefore, in refusing to allow condonation of appearance of applicant for indefinite period on a vague and frivolous application. I do not see any abuse of the power by the learned Addl. District Judge, Central Karachi. The application for condonation was worth reading, therefore, it is reproduced above. However, from the

record of the case, it appears that applicant is prima facie guilty of violating bail orders dated **19.7.2014** (annexure A/3) and he has avoided to explain his position before the Court whose order have been violated by him by abusing the process of this Court under the cover of instant proceeding for almost (11) eleven months. Therefore, to prevent the abuse of process of the Court, and to secure the ends of justice. I am obliged to make the following order.

1. In terms of Section **561-A Cr.P.C** read with **Section 497(5) Cr.P.C** the applicant is put on notice that why bail before arrest granted by the learned A.D.J on 19.7.2014 should not be cancelled on the ground of violating its terms. I believe with this observation the only technical grievance of applicant that Additional Session Judge was not competent to hear plea of cancelation of bail directly since it was not routed through the Court of Session Judge, Central, Karachi is also redressed.
2. Pending decision on the proposition of cancellation of bail, the applicant is directed to comply with initial order of payment of monthly installment by depositing the arrears of installments before the Nazir of this Court for the period from September, 2014 to November, 2015 amounting to Rs.13,00,000/- within 15 days.

SM

JUDGE