

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.06.2015

CORAM

THE HONOURABLE MR. JUSTICE P.DEVADASS

Crl.OP.No.13487 of 2015

C.Anandane

.. Petitioner

Versus

State Rep by:

The Deputy Superintendent of Police,
CBI/SPE/ACB,
Chennai.

.. Respondent

Prayer:

Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to set aside the order passed in Crl.M.P.No.804 of 2015, dated 02.06.2015 and issuance of Non-Bailable Warrant by the trial court, Spl. Judge, Puducherry.

For Petitioner : Mr.Abdukumar Rajarathinam
for Mr.S.Ashok Kumar

For Respondent : Mr.S.Bhasuran,
D.L.A & Spl. P.P. for CBI.

O R D E R

This petition has been filed to set aside the order passed in Crl.M.P.No.804 of 2015, dated 02.06.2015 and issuance of Non-Bailable Warrant as against the petitioner by the trial court/Special Judge under P.C.Act/Principal District Judge, Puducherry in Special C.C.No.1/2008.

2. Heard the senior counsel appearing for the petitioner and the learned Deputy Legal Adviser cum Special Public Prosecutor, CBI.

3. The petitioner, who is A1 in the Spl.C.C.No.1 of 2008 on the file of the learned Special Judge under P.C.Act/Principal District Judge, Puducherry seeks to set aside the order, dated 02.06.2015, wherein, his petition under section 317 Cr.P.C was dismissed and NBW has been issued against him.

4. CBI is prosecuting A1/petitioner and A2 before the said court for their alleged commission of certain white collar offences. There has been progress in the case. The case has reached defence evidence stage. The plea of the accused to examine defence witness, since it

was dismissed by the trial court, which was upheld by this court, the accused took the same in S.L.P.No.10326/2014 before the Hon'ble Supreme Court, in which the Hon'ble Apex Court has stayed all further proceedings in the trial court. In such circumstances, the case came to be adjourned from time to time. Personal appearance of A2 has already been dispensed with by that court.

5. On 02.06.2015, A1's counsel filed a petition under Section 317 Cr.P.C to condone the absence of A1. The trial court refused to condone his absence, holding that no valid material to substantiate his claim that he is suffering out of Blood Pressure and issued N.B.W to arrest the petitioner.

6. The learned counsel for the petitioner contended that there is no delaying tactics, there is no willful absence. Petitioner also has been represented by a counsel and a petition also has been filed, in such circumstances, the trial court not showing indulgence, indicates non exercise of judicial discretion vested on it.

7. On the other hand, Mr.Bhasuran, the Deputy Legal Adviser, C.B.I., Chennai zone seeks to sustain the order of the trial court by submitting that no valid reason has been given.

8. I have anxiously considered the rival submissions and perused the impugned order and materials on record.

9. The petitioner was already on bail. As on date, his bail has not been cancelled in a manner known to law. Now, the case came up on 02.06.2015, not for any effective hearing, not for doing any constructive trial court work, it came like a regular calling work. The matter also has been already stayed by the Hon'ble Supreme Court. In the circumstances, the trial court could have shown indulgence. Thus, the dismissal of petition under Section 317 Cr.P.C and the consequent issuance of NBW are unsustainable and is required to be set aside.

10. In the result, the order passed by the learned Special Judge under P.C.Act/Principal Sessions Judge, Puducherry in CrI.M.P.No.804/2015 in Spl.C.C.No.1/2008 on 02.06.2015 is set aside. The said CrI.M.P.No.804/2015 is allowed. Consequently, the NBW is recalled. The respondent will return the unexecuted NBW to the trial court.

11. Accordingly, this Criminal Original Petition is disposed of. Consequently connected M.P.No.1/15 in closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Special Judge under P.C.Act/Principal Sessions Judge,
Puducherry
2. The Deputy Legal Adviser/Special Public Prosecutor,
South Zone, CBI, Chennai.
3. The Deputy Superintendent of Police,
CBI/SPE/ACB,
Chennai.
- 4.The Public Prosecutor, High Court, Madras

1 cc to Mr.S.Ashokumar, Advocate Sr.No.30275

Cr1.OP.No.13487 of 2015

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pmk.1.7.2015



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