

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2015

CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN

CrI.O.P.No.16304 of 2015

G.Sampath Kumar

...Petitioner/Accused No.4

Vs.

1. State of Tamil Nadu
rep. by its
Deputy Superintendent of Police
Crime Branch CID, OCU-II
Egmore, Chennai-600 008.Respondent/Complainant
2. C.Goutham Chand Nimani2nd Respondent/
Defacto Complainant

Prayer:-

Criminal Original Petition filed under Section 482 of Cr.P.C., seeking to call for the records in respect of impugned Adjudication Order, dated 11.05.2015, in P.R.C.No.85 of 2015 on the file of the learned XI Metropolitan Magistrate, Saidapet, Chennai, in issuing Non-bailable Warrant as against the petitioner/accused No.4 and quash the same.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondents : Mr.Shanmugha Velayutham
Public Prosecutor for R.1

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O R D E R

On the basis of the complaint given by the complainant, a case in CBCID Headquarters Cr.No.2 of 2013 was registered against accused No.1 for the offences under Sections 384, 420, 506 (1) and 120(B) IPC. The petitioner is implicated as accused No.4 on the basis of confession given by accused No.1 and others. On investigation, it came to light that accused No.1 is the friend of accused No.4 and he contacted accused No.4 to help some Jain community people, who involved in the IPL Cricket Betting Case and accused No.1 in criminal conspiracy with accused No.4 planned to extract money and also promised the accused No.4 to pay an amount of Rs.60 lakhs to help bookies to escape from the clutches of law. The accused No.4 accepted the deal and received various amount, through his friends, on different dates. The first accused is also alleged to have given a

cash of Rs.30 lakhs to the accused No.4 at his office in the DGP Office Campus, Chennai. On investigation, since, it is revealed that the offence under the provision of the Prevention of Corruption Act is attracted against the petitioner/G.Sampath Kumar, I.P.S., a public servant within the meaning of 2(c) of the Prevention of Corruption Act, 1988. Hence, the investigation was transferred to the first respondent/Deputy Superintendent of Police, Organised Crime Unit-II, Chennai, for further investigation. On completion of further investigation, the first respondent laid down a final report before the learned XI Metropolitan Magistrate, Chennai, and the same was taken on his file in P.R.C.No.85 of 2015 u/s. 120(b), 384, 420, 506 (i) and 34 of IPC and Sections 8, 13(1)(d)(i) r/w. 13(2) of the Prevention of Corruption Act, 1988 and the learned Magistrate, by Adjudication Order, dated 11.05.2015, was pleased to issue summons to accused Nos. 1 and 3 and issued Non-Bailable Warrant to accused Nos. 2 and 4 and posted the matter to 08.06.2015. Subsequently, accused No.2 surrendered and therefore, the Non-Bailable Warrant issued against him is recalled. On 08.06.2015, the XI Metropolitan Magistrate, Saidapet, Chennai, by Adjudication Order, dated 11.05.2015, in P.R.C.No.85 of 2015, directed the Inspector of Police to execute the Non-Bailable Warrant pending against accused No.4. Aggrieved against the issuance of Non-Bailable Warrant, this Criminal Original Petition is filed by accused No.4.

2. Mr.R.C.Paul Kanagaraj, learned counsel appearing for the petitioner/accused No.4, has put forth his three-fold submissions. Firstly, he would contend that the petitioner has been charged under the provision of Prevention of Corruption Act, therefore, the Magistrate has got no jurisdiction and he is not vested with the power to issue a Non-Bailable Warrant and the case has to be necessarily dealt with by the Special Court constituted under the Prevention of Corruption Act. Secondly, he would contend that the summon has not been served on the petitioner. Thirdly, he would contend that the Lower Court ought not to have straightaway issued the warrant treating him as an absconding offender.

3. Mr.Shanmugha Velayutham, learned Public Prosecutor, would contend that the summon has been issued to him and it was served on him, in spite of the same, he did not appear and thereafter, he was treated as an absconding accused and the Non-Bailable Warrant has been issued. He would further contend that earlier, the petitioner/accused No.4 moved this Court by filing CrI.O.P.No.12629 of 2015, seeking anticipatory bail and this Court, by order dated 17.06.2015, dismissed the said petition with a specific direction, directing him to appear before the concerned Magistrate and seek proper relief. At this juncture, the learned Public Prosecutor fairly submitted that after the insertion/addition of the offence under Section 13(2) of the Prevention of Corruption Act, 1988, in the charges only the Special Court will have jurisdiction.

4. Heard both sides. By consent, the main Criminal Original Petition itself is taken up for final disposal at the stage of

admission.

5. In this case, the summon has been issued to the petitioner/accused No.4, directing him to appear before the Lower Court, inspite of the same, he did not appear and thereafter, he was treated as an absconding accused and the Non-Bailable Warrant has been issued. Even, if the Magistrate has got no jurisdiction, it is needless to point out that once a Court issue a summon asking a person to appear before the Court, the person has to necessarily appear before the Magistrate concerned and thereafter, he can very well raise the point that the Court has got no jurisdiction. The first duty cast upon the person concerned is that he should appear before the Magistrate concerned and thereafter, appraise the Court regarding the jurisdiction and at that point of time, definitely, the Court will consider the point raised by the person regarding jurisdiction.

6. As regards the second contention raised by the learned counsel appearing for the petitioner that the summon has not been served on him so far. This cannot be accepted for the simple reason that the petitioner has admittedly filed a Criminal Original Petition before this Court seeking anticipatory bail. Whether it would have been possible for the petitioner to file a petition seeking anticipatory bail or the present petition if he is not been aware of the notice. Therefore, it could be easily inferred that the petitioner/accused No.4 is very well aware of the fact and therefore, the second contention raised by the petitioner that the petitioner/accused was not served with summon through Court or proper mode will not arise for consideration at this stage.

7. Now, as regards the last contention raised by the learned counsel appearing for the petitioner that the Lower Court has straightaway issued a Non-Bailable Warrant treating the petitioner/accused No.4 as an absconding offender. The said contention has to be taken into consideration as to on previous occasions, how many times he has not appeared for the hearings and when he was treated as an absconding accused. Suffice to state that the Magistrate has issued a Non-Bailable Warrant against accused No.4 only after treating him as an absconding accused.

8. At this juncture, having regard to the fact that the learned Public Prosecutor fairly submitted that after the insertion/addition of the offence under Section 13(2) of the Prevention of Corruption Act, 1988, in the charges, only the Special Court will have jurisdiction to try the case, this Court thinks it a fit case to direct the learned XI Metropolitan Magistrate, Saidapet, Chennai, to transfer the case to appropriate Special Court concerned and the Special Court concerned on taking the matter on file shall fix a date for the appearance of the petitioner/accused No.4, on which date, the petitioner/accused No.4 shall appear before the Special Court, without fail, and shall file proper application, if necessary, which he is legally entitled to in accordance with law

and on such filing of application, if any, the Special Court concerned shall consider the same and pass appropriate orders, on merits and in accordance with law. This Criminal Original Petition is ordered accordingly.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

paa

To

1.XI Metropolitan Magistrate,
Saidapet, Madras.

2.The Deputy Superintendent of Police
Crime Branch CID, OCU-II
Egmore, Chennai-600 008.

3.The Public Prosecutor,
High Court, Madras.

1 CC to Mr.R.C.Paul Kanagaraj, Advocate SR.No. 33857

Crl.O.P.No.16304/2015

SCD (CO)
PSI (07.07.2015)

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