



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.08.2015

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

Criminal Original Petition(MD) No.16454 of 2015

Selvam : Petitioner/Respondent

Vs.

1.The Inspector of Police,
Aruppukkottai Town Police Station,
Virudhunagar District. :1st Respondent/Complainant

2.Karpagam : 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to set aside the order of issuing Non Bailable Warrant issued against the petitioner by order dated 07.08.2015 in Cr.M.P.No.2400 of 2015 in M.C.No.47 of 2009 on the file of the learned Judicial Magistrate, Aruppukkottai and pass such appropriate order as deem and fit in the circumstances of the case.

For Petitioner :Mr.V.Sasikumar

For Respondents :Mr.P.Kannithevan
Government Advocate(Crl. Side)

O R D E R

The petitioner has come forward with this petition praying to set aside the order of issuing Non Bailable Warrant against the petitioner by order dated 07.08.2015 in Cr.M.P.No.2400 of 2015 in M.C.No.47 of 2009 on the file of the learned Judicial Magistrate, Aruppukkottai.

2. The learned counsel for the petitioner would submit that the petitioner is the respondent in the Cr.M.P.No.2400 of 2014 and he has come forward with this application for setting aside the order dated 07.08.2015 stating that issuance of Non Bailable Warrant against him is illegal as per the decision reported in **S.T.Prabhakar Vs. The Secretary to Government, Home Department, Fort St. George, Chennai 600 009** reported in **2011 (1) CTC page 355.**

<https://hcservices.ecourts.gov.in/hcservices/>
3.Considering the limited argument advanced by the learned counsel for the petitioner, notice to the second respondent has been dispensed with.

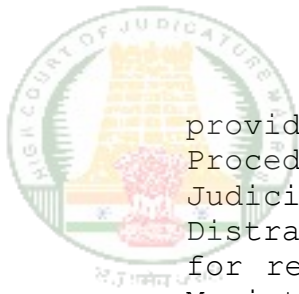


4. The second respondent/wife filed M.C.No.47 of 2009 for maintenance under Section 125 Cr.P.C where monthly maintenance of Rs.5,000/- has been awarded and since he has not paid maintenance, subsequently M.C.No.47 of 2009 has been remitted by the District Judge, Srivilliputhur and after that monthly maintenance of Rs.8000/- has been awarded against which, this petitioner herein has preferred revision in Revision No.6 of 2013 and since he has not paid the maintenance amount, an application was filed under Section 125(3) of Cr.P.C and in that, the petitioner was served and the matter was posted for counter and disposal and he has not appeared before the Court. Already there was an order of this Court to dispose the said case within a period of six months and hence, the respondent was directed to file the counter on or before 07.08.2015 and even on the said application, the petitioner has not appeared and the application filed under Section 126 Cr.P.C was dismissed and hence, Non Bailable Warrant has been issued against the accused.

5. The learned counsel would rely on the decision reported in **2011 (1) CTC 355** stating that the issuance of Non Bailable Warrant is illegal. The Court should have issued warrant for attachment and sale of movable property or issue warrant to the Collector of District authorizing him to realize amount as arrears from movable or immovable property of defaulter or both.

6. In that judgment, the learned counsel would rely upon the paragraph Nos.9, 10 and 11 and the same is extracted hereunder:

9. A glance through the above provisions would show that under Section 125(3) of the Code, there is a limitation to entertain the petition and under Section 128 of the Code, there is no such limitation provided for enforcing the order. The limitation provided under Section 125(3) is one year. Therefore, the petition can be filed under Section 125 of the Code only in respect of arrears for a period of 12 months. But, in the given case, the petition was filed to recover the arrears for a period of 13 months. That was the reason why, probably, the petitioner had thought it fit to file the same under Section 128 of the Code, for which, there is no limitation period. Therefore, it is crystal clear that the wife of the petitioner had consciously filed the petition under Section 128 of the Code for recovery of the amount due for a period of 13 months. Of course, it is true that the petitioner was absent on 23.05.2005 and he did not make any payment, and thus, he committed default. While dealing with a petition under Section 128 of the Code, in such an event, the next course to be adopted by the Magistrate is to issue a "Distrain Warrant" as provided under Sections 421 and 431 of the Code either for attachment and sale of any movable property belonging to the petitioner or to issue a warrant to the Collector of the District, authorizing him to realise the amount as arrears from the movable or immovable property or both of the petitioner.



provided in the second schedule to the Code of Criminal Procedure is the warrant for recovery of fine. The learned Judicial Magistrate, while passing the order to issue a Dstraint Warrant, he meant to issue Form No.44, viz., warrant for recovery of fine only. To this extent, the learned Judicial Magistrate had done everything in accordance with law.

11. Unfortunately, from the records, it could also be seen that on the very same day, instead of issuing a warrant for recovery of fine, [Form No.44], the learned Judicial Magistrate issued a distress warrant as per Form No.18 in the schedule, which is the warrant of imprisonment on failure to pay maintenance. It is needless to point out that such a warrant of imprisonment could be issued only in a petition filed under Section 125(3) of the Code, that too, on getting satisfied that the defaulter had failed to comply with the order without sufficient cause. For any reason, if the defaulter is able to show sufficient cause, then the Magistrate shall not impose sentence of imprisonment. Under Section 125(3) of the Code, the Magistrate has got power to issue warrant for levy of fine [Form No.44] and in addition to that, he may impose a sentence of imprisonment and the said term shall not extend beyond 12 months period. While deciding as to whether sentence of imprisonment can be imposed or not and while considering the petition under Section 125(3) of the Code, the Magistrate is required to give an adjudication as to whether failure to comply with the order is without sufficient cause or not. In the absence of any such finding, the Magistrate shall not impose sentence of imprisonment.

7. Since the application has been filed under Section 125 Cr.P.C on being satisfied that the defaulter had failed to comply with the order without sufficient cause, the Magistrate can impose sentence. But, because of non appearance, Non Bailable Warrant has been issued on the application filed under Section 125(3) Cr.P.C. In such circumstances, I am of the view that the above stated citation is not giving any helping hand to this petitioner.

8. According to the learned counsel for the petitioner, the revision has also been dismissed for non-prosecution and at the time of filing of revision petition, the order has been passed on payment of Rs.2,000/- per month and it was complied with till date.

Even the direction has been issued by the court but he has not appeared before the court and filed counter which shows the malafide intention of the petitioner in not paying the maintenance amount to the wife/respondent. In such circumstances, I do not find any illegality or irregularity in the order passed by the trial court for issuance of Non Bailable Warrant. Hence, this petition is dismissed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar



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To

1.The Inspector of Police,
Aruppukkottai Town Police Station,
Virudhunagar District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to M/S.V.Sasikumar Advocate SR.No.49287

GJM/NGM/SS/9.9.15-4P-4C

Order made in
Cr1.O.P.(MD)No.16454 of 2015
Dated : 26.08.2015