

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.06.2016

Pronounced on : 26.10.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.Nos.724, 725 and 733 of 2016  
and Crl.MP.Nos.5370, 5371 and 5486 of 2016

Balu @ R.Balamurugan .. Petitioner in all the cases  
Vs.

State represented by  
The Inspector of Police,  
CCB, Chennai,  
Chennai - 600 007. ... Respondent in all the cases

Prayer in Crl.RC.724 of 2016 :- Criminal Revision Petition  
filed under Section 397 r/w 401 of Cr.P.C. to set aside the  
order dated 27.01.2016 made in Crl.MP.No.1595 of 2016 in  
SC.No.387 of 2005 passed by the learned Sessions Judge, Mahila  
Court, Chennai.

Prayer in Crl.RC.725 of 2016 :- Criminal Revision Petition  
filed under Section 397 r/w 401 of Cr.P.C. to set aside the  
order dated 01.04.2016 made in "A" Diary in SC.No.387 of 2005  
passed by the learned Sessions Judge, Mahila Court, Chennai.

Prayer in Crl.RC.733 of 2016 :- Criminal Revision Petition  
filed under Section 397 r/w 401 of Cr.P.C. to set aside the  
order dated 26.04.2016 made in Crl.MP.No.5739 of 2016 in  
SC.No.387 of 2005 passed by the learned Principal Sessions  
Judge, Chennai.

For Petitioner : Mr.R.Sankarasubbu in all the cases.

For Respondent : Mr.Mohammed Riyaz,  
GA (Crl.side) in all the cases.

COMMON ORDER

The Criminal revisions in Crl.RC.No.724 and 725 of 2016 are  
directed against the order passed by the learned Sessions Judge,  
Mahila Court, Chennai made in Crl.MP.No.1595 of 2016 in  
SC.No.387 of 2005 dated 27.01.2016 and 01.04.2016 respectively  
and the Crl.RC.No.733 of 2016 is directed against the order

dated 26.04.2016 made in Crl.MP.No.5739 of 2016 in SC.No.387 of 2005 on the file of the Principal Sessions Judge, Chennai.

2.The revision petitioner Balu @ Balamurugan is the 4th accused in SC.No.387 of 2005 on the file of Sessions Judge, Mahila Court, Chennai. All the criminal revisions are filed against the SC.No.387 of 2016 by the same accused to condone the absence of the accused, to set aside the order made in "A" Diary and to split up the accused from the case and transfer the same to some other Court. Heard the arguments of the learned counsel for the petitioner and the learned Government Advocate (Crl. side) and this Court passed the common order.

3.It is admitted that the case was posted on 27.01.2016 for the hearing. The petitioner filed application under Section 317 in Cr.PC Crl.MP.No.1595 of 2016 to condone the absence of the petitioner, the petition was dismissed by the learned Sessions Judge, Mahila Court, Chennai, against the said order Crl.RC.No.724 of 2016 is filed before this Court.

4.The learned counsel for the petitioner would contend that the trial Court without considering the facts and circumstances of the case erroneously dismissed the application, after dismissing the application the trial Court ought to have issued bailable warrant to the petitioner/accused, but the trial Court erroneously issued NBW is non-est in the eye of law and the order of the trial Court is liable to be set aside.

5.The same petitioner has filed another case against the order dated 01.04.2016 in SC.No.387 of 2005, wherein the trial Court stated that A1 to A3, A5 to A7 are present. Case opened by the prosecution side. Charges framed under Sections 384, 384 r/w.34, 376, 354, 509, 294(b), 420, 420 r/w.34, 342, 417, 452, 427, 352, 448, 363, 392, 392 r/w.34, 406, 406 r/w.34, 343, 506 (ii), 506(ii) r/w.109, 364 A, 364 A r/w.109 IPC and Section 4 of the TNWH Act against A1 to A3, A5 to A7. The case is split up against A4 and charges was framed against the other accused, the order dated 01.04.2016 which is extracted hereunder :-

"A1 to A3, A5 to A7 present. NBWs against A4 and A5 - ordered to be issued on 27.01.2016. On 29.01.2016. NBW ordered against A5 is recalled. A4 has obtained Anticipatory Bail from the Hon'ble High Court as early as on 10.02.2016 and the said order copy was received by this Court on 01.03.2016. After a month time, he is yet to appear before this Court, vide Crl.OP.No.2569/16. Thereafter another Order pertaining A4 is received to the effect that two months extension of time was granted order date 14.03.2016 the said order is received on 30.03.2016. Today it is represented that, he(A4) has again filed another petition for

further extension of time. Hence in the stated circumstances and this case is more than 10 years old case, against A4 is ordered to be split up."

Aggrieved against the said order dated 01.04.2016, the petitioner has filed Crl.RC.No.725 of 2016 before this Court.

6.The learned counsel for the petitioner contended that the trial Court without application of mind and following the procedure split up the case against the accused/A4. There is no specific reason has been stated in the order of the Court below for splitting up the case, the learned counsel prays to set aside the order of the trial Court and to allow the revision.

7.The petitioner has filed Crl.MP.No.5739 of 2016 before the Principal Sessions Judge, Chennai for transfer of SC.No.387 of 2005 on the file of Sessions Judge, Mahila Court, Chennai to some other Sessions Court where Mahila Judge is a Presiding Officer. The trial Court has not entertained the petition for transfer and dismissed the petition on 26.04.2016. Against the said order, the petitioner preferred Crl.RC.No.733 of 2016.

8.In this case, the learned Government Advocate (crl. side) vehemently contended that A4 obtained anticipatory bail from this Court and failed to comply the conditions imposed at the time of granting anticipatory bail. Since, A4 has not appeared before the trial Court, the trial Court correctly issued NBW against A4 and split up the case against A4, charges were framed against the other accused and proceeded with the trial. Without any reason A4 repeatedly filed Section 317 Cr.PC petition before the trial Court. The trial Court not satisfied with the reasons stated in the petition filed by the petitioner before the Court below, dismissed the petition to condone the delay for his absence and issued NBW against the petitioner/A4. There is no illegality or infirmity in the orders passed by the Court below. The learned Government Advocate (crl.side) prays for dismissal of the revision petitions filed by the petitioners.

9.Admittedly, the revision petitioner herein obtained order of anticipatory bail of this Court as early as on 10.02.2016 and the order copy was received by the Court below on 01.03.2016, the petitioner had not appeared before the trial Court. Further on 27.01.2016, the petitioner has not appeared before the trial Court and filed petition under Section 317 Cr.PC stating that due to his ill-health condition, he was bedridden, the Doctor advised him to avoid travelling and to take rest, for which there is no medical records or certificate produced along with the above said petition. The trial Court after considering the above facts and circumstances passed the following order which reads as follows :-

5.Case is of the year 2005. Crime No.is 582/2004. Originally, this case was posted on

23.02.2006 for framing of charges. On petition u/s.317 Cr.PC (for A1 and A7), case was adjourned to 06.03.2006, 15.03.2006. Thereafter, for one reason or other like, CrI.MP. filed and pending : Revision pending before the Higher Courts : and posted for framing of charges on 06.12.2013. Thereafter, on 12.12.2014, again when the matter was posted for framing of charges, petition u/s.317 Cr.PC was filed for A4 and dismissed. NBW against A4 was ordered to be issued.

6.Likewise, on 07.01.2015, 09.01.2015, 29.01.2015, 26.08.2015, 20.09.2015, 01.10.2015 and 06.10.2015, on petitions, charges could not be framed and adjourned. Very recently, thereafter, on 20.10.2015, 28.10.2015, 30.10.2015, 05.11.2015, 16.11.2015, 19.11.2015 and 24.11.2015, on petitions, case was adjourned and charges could not be framed.

7.Today also, again though time and again very instructions have been given for appearance of all the accused, petition u/s.317 Cr.PC is filed. In the stated, circumstances, this petition stands dismissed.

10.The revision petitioner/A4 has not appeared before the Court and on his petition the case was adjourned for several times and the trial Court was not able to frame charges because of the non appearance of the revision petitioner/A4. The trial Court rightly dismissed the application filed by the petitioner under Section 317 Cr.PC, the petitioner has every knowledge about the dismissal of the petition, since the matter involved serious offences under Sections 384, 384 r/w.34, 376, 354, 509, 294(b), 420, 420 r/w.34, 342, 417, 452, 427, 352, 448, 363, 392, 392 r/w.34, 406, 406 r/w.34, 343, 506(ii), 506(ii) r/w.109, 364 A, 364 A r/w.109 IPC and Section 4 of the TNWH Act against A1 to A3, A5 to A7. After obtaining anticipatory bail before this Court, the accused/A4 failed to comply the conditions imposed at the time of granting anticipatory bail. The trial Court after considering the long pendency of the case and the attitude of the petitioner, issued NBW on the petitioner/A4 on 27.01.2016, till date the NBW is pending against the petitioner/A4. The other accused are regularly appearing before the Trial Court. Since, the NBW was issued against the revision petitioner/A4 the case was split up against him and the charges were framed against the remaining accused, with a direction to issue fresh summons to the witnesses to appear before the Court to proceed with the trial. In view of the order passed by the trial Court on 01.04.2016, the case against the revision petitioner/A4 was split up is perfectly valid.

11. In this case, it is admittedly the Mahila Court is presided by a District Judge and charges were framed in this case. If the petitioner wanted to transfer the case from that Court to some other Court, he has to file transfer application in the High Court, not before the Sessions Court. This Court finds there is no illegality or infirmity in the orders passed by the Court below and the same does not warrant any interference by this Court.

12. In the result, all the criminal revisions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Asst. Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Principal Sessions Judge, Chennai.
2. The Sessions Judge, Magalir Neethimandram, Chennai. (Mahila Court)
3. The learned Public Prosecutor, High Court, Madras.
4. The Inspector of Police, CCB, Chennai-600 007.

Order in

Crl.R.C.Nos.724, 725 and 733 of 2016

AK(CO)  
RVR 03/01/2017

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