

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Criminal Revision Case No.975 of 2016
and
Crl.M.P.No.7769 of 2016

Thanjai Chezian

... Petitioner/Accused No.5

Vs.

State, by
The Inspector of Police,
Central Bureau of Investigation,
Economic Offence Wing,
Chennai.

... Respondent/Complainant

Criminal revision petition has been filed to call for the records in Crl.M.P.No.1871 of 2016 in C.C.No.5127 of 2009 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, vide order dated 20.7.2016 in Crime No.RC 11/E/2008-CBI/ EOW/Chennai, on the file of the respondent police and set aside the order of dismissal of Crl.M.P.No.1871 of 2016 and recall the non bailable warrant issued against the petitioner and permit the petitioner to be represented by his counsel till the disposal of the revision application.

For Petitioner : Mr.V.Parthiban

For Respondent : Mr.K.Srinivasan,
Special Public Prosecutor,
for CBI cases

ORDER

The present criminal revision petition has been filed to call for the records in Crl.M.P.No.1871 of 2016 in C.C.No.5127 of 2009 pending on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, vide order dated 20.7.2016 in Crime No.RC.11/E/2008-CBI/EOW/Chennai, pending on the file of the respondent police and to set aside the order of dismissal of Crl.M.P.No.1871 of 2016 and to recall the non bailable warrant issued against the petitioner and

permit the petitioner to be represented by his counsel till the disposal of the revision application pending before this Court.

2. It is the case of the petitioner that he has been arrayed as A.5 in C.C.No.5127 of 2009 pending on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai. In the said case, the petitioner filed an application under Section 317 Cr.P.C. to condone his absence. But, the learned Judge dismissed the said application and issued non bailable warrant, against which, the petitioner filed a revision petition before this Court in CrI.R.C.No.500 of 2016. In the said revision petition, this Court passed the following order:-

" 3. From the records, it is seen that in the facts and circumstances, the trial Court had decided to condone the absence of the accused on the hearing date and dismissed his petition filed under Section 317 Cr.P.C. and NBW has been issued. It remains un-executed.

4. In the facts and circumstances of the case, the dismissal of the petition under Section 317 Cr.P.C. for the refusal to condone the absence of the accused on the particular day now, cannot be questioned. However, there is no bar for A.5 to take next course of action to protect his personal liberty in accordance with law. "

Pursuant to the said order passed by this Court, the petitioner filed an application under Section 70(2) Cr.P.C. on 20.7.2016 to recall the non bailable warrant. However, the learned Magistrate dismissed the said application. Aggrieved over the same, the present criminal revision petition has been filed.

3. Learned Special Public Prosecutor for CBI Cases opposed to entertain the revision petition.

4. However, the learned counsel appearing for the petitioner has filed an affidavit of undertaking before this Court, wherein the petitioner undertakes to appear before the trial Court while framing charges. Further, the learned counsel appearing for the petitioner submitted that the petitioner undertakes to appear before the trial Court regularly on all hearing dates without any default.

5. In view of the said undertaking given by the petitioner, I am of the opinion, the revision petition can be entertained.

6. Accordingly, recording the said undertaking given by the petitioner, the order of the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, dated 20.7.2016 made in CrI.M.P.No.1871 of 2016 in C.C.No.5127 of 2009 is set aside and the present criminal revision petition is allowed. The trial Court is directed to re-call the warrant issued against the petitioner on 20.7.2016. The petitioner shall appear before the said Court while framing charges and thereafter, he is directed to appear before the said Court on all hearing dates without any default. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

sbi

To

1. The Additional Chief Metropolitan Magistrate,
Egmore, Chennai.

2. The Inspector of Police,
Central Bureau of Investigation,
Economic Offence Wing,
Chennai.

3. The Special Public Prosecutor,
CBI Cases,
High Court, Madras.

4. The Chief Metropolitan Magistrate,
Egmore, Chennai 09.

+1cc to Mr.V.Parthiban, Advocate, S.R.No.42191

CrI.R.C.No.975 of 2016

SCD(CO)
CA(29/07/2016)