

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P. No.24676 of 2016

Siva Subramanian

... Petitioner

Vs

The State
rep by the Inspector of Police
C.C.B., AVS-II
Chennai.

... Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to set aside the endorsement dated 05.10.2016 made by the Judicial Magistrate's Court No.1, Poonamallee for returning the petition filed by the petitioner under sections 451 and 457 Cr.P.C. and direct the Judicial Magistrate's Court No.1, Poonamallee to entertain the petition seeking permission to change the surety.

For petitioner : Mr.C.Padmanabhan, Senior Counsel
for Mr.S.B.Viswanathan

For respondent : Mr.C.Emalias
Additional Public Prosecutor

O R D E R

This petition has been filed to set aside the endorsement dated 05.10.2016 made by the Judicial Magistrate's Court No.1, Poonamallee for returning the petition filed by the petitioner under sections 451 and 457 Cr.P.C. and direct the Judicial Magistrate's Court No.1, Poonamallee to entertain the petition seeking permission to change the surety.

2. Heard the learned Senior Counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

3. The respondent police registered a case in Cr.No.55 of 2013 on 06.09.2013 for offences u/s 3(2)(a), 4(1), 5(1)(a) of the Prohibition of The Immoral Traffif (Prevention) Act, 1956 and seized an Innova Car bearing Registration No.TN-09-BL-9911 in connection with the offence.

4. The petitioner who is said to be the owner of the vehicle filed Crl.M.P.No.4894 of 2013 u/s 451 Cr.P.C. and interim custody of the car was given to him by the Judicial Magistrate No.I, Poonamallee on 13.09.2013 on certain conditions, viz., that the petitioner should execute a bond for Rs.10,000/- with one surety and other conditions with regard to production of the vehicle. The petitioner furnished the bond with one surety, by name Ramaswamy, S/o Srinivasan. It appears that the said Ramaswamy has given the original doc no.683/2004 in order to show his solvency. Now Mr.Ramasamy wants to withdraw from the suretyship and therefore, the petitioner filed an application for substitution of surety. The learned Magistrate has returned the application on 05.10.2016, seeking explanation from the petitioner as to how the petition is maintainable. Challenging the return order, the petitioner is before this Court.

5. Normally, this Court will not interfere in an order of return of the petition, as that is purely an administrative order and only when the judicial order is passed, can the Court interfere u/s 482 Cr.P.C. However, it is trite that a person who comes forward to give surety can apply for discharge, provided the person for whom he stood surety agrees for substitution. Therefore, the petition filed by the petitioner cannot be said to be not maintainable. The original petition that was filed by the petitioner before the Judicial Magistrate No.I, Poonamallee has been filed along with the endorsement of the Magistrate, before this Court and therefore, the same cannot be returned to the petitioner. However, liberty is given to the petitioner to file a fresh petition before the Judicial Magistrate No.I, Poonamallee for substitution of surety. The learned Magistrate is directed to entertain the same and pass orders in accordance with law, after testing the genuineness of the new solvency surety and thereafter, can discharge the existing surety in accordance with law.

6. Learned Additional Public Prosecutor submitted that the Final Report is ready and therefore, the respondent police is directed to file a Final Report within four weeks from the date of receipt of a copy of this order.

This petition is ordered accordingly.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.1,
Poonamallee.

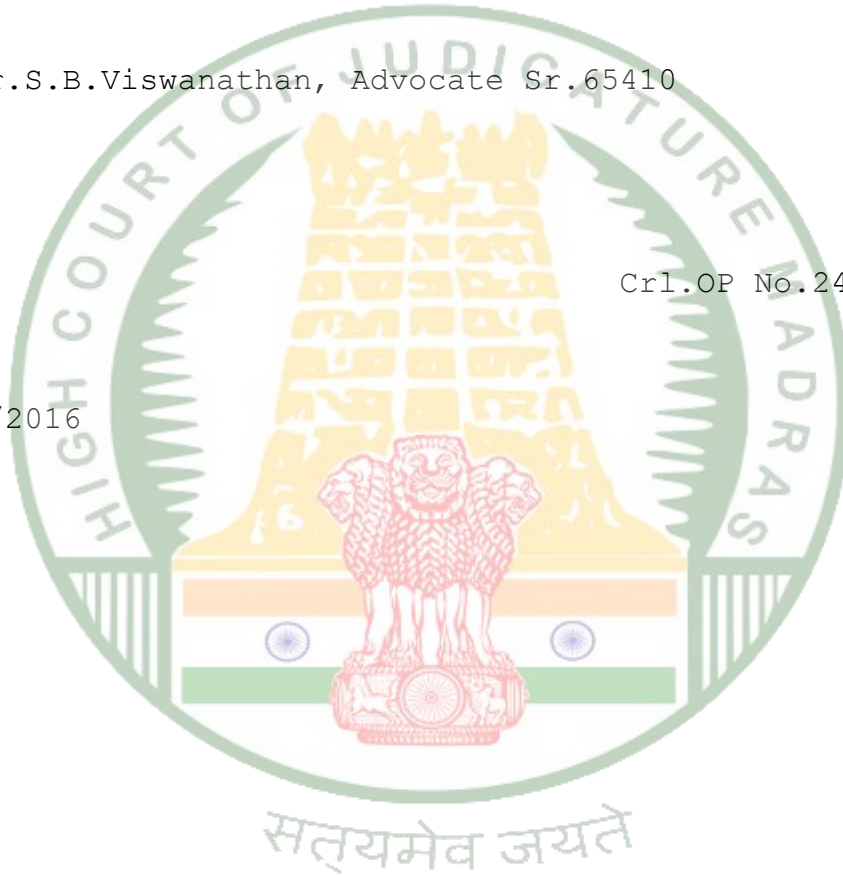
2.The Inspector of Police,
C.C.B., AVS-II, Chennai.

3.The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.S.B.Viswanathan, Advocate Sr.65410

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