

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2016

CORAM:

THE HON'BLE DR.JUSTICE P.DEVADASS

Crl.O.P. No.4514 of 2016

S.Sundar

.. Petitioner/Accused 2

Vs.

State by

Inspector of Police,
Vigilance and Anti-Corruption,
City II Detachment,
Chennai-35,

Crime No. 04/AC/2011/CCII

.. Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to issue direction to the learned Special Judge cum Chief Judicial Magistrate Chengleput to receive the petition dated 22.02.2016 filed under Sec.70(2) Crl.P.C. and recall the NBW without insisting the petitioner to surrender in connection with a case in Special C.C.No.3 of 2014.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.P.Govindarajan
Addl.Public Prosecutor

O R D E R

A2 in the Special C.C.No.3 of 2014 on the file of the learned Special Judge/Chief Judicial Magistrate, Chengleput has directed this criminal original petition under Section 482 Cr.P.C aggrieved by the return of his petition filed under Section 70(2) Cr.P.C which has been to recall the NBW since the accused was not present in the court.

2. Petitioner/A2 is accused of having committed criminal misconduct and he is being prosecuted under the Prevention of Corruption Act, 1988. The statutory formalities under Section 207 Cr.P.C was over. The case is coming up for further hearing. Lastly, it came up on 16.2.2016. On that date, it is stated by the prosecution that the petitioner went into oblivion.

3. In the circumstances, to enforce the attendance of the accused, the learned Special Judge has issued NBW against him. The NBW was entrusted to respondent police to execute it.

4. Apprehending arrest in execution of the NBW, through his counsel, the petitioner had filed a recall petition on 22.1.2016.

5. The learned Chief Judicial Magistrate, Chengalpattu made following endorsement :

"22.2.2016

Returned

Petitioner/Accused not present. Hence this petition is returned.

sd/-

Chief Judicial Magistrate
Chengalpattu"

6. The case is posted to 05.3.2016. Now the petitioner is before us.

7. The learned counsel for the petitioner would submit that in this branch of law, there is march of law. Earlier, there used to be not entertaining such recall petitions when the accused was not present in the court. This conception of compulsion of the presence of accused has been departed because of change in the judicial thinking. The fact that the accused, who is stated to have eluded has since engaged a counsel and wanted to participate in the criminal proceedings had effect on the courts.

8. The learned counsel for the petitioner would submit that without insisting upon the presence of the accused, the court can recall NBW. I hasten to add that the courts can impose certain conditions, but it should not be harsh or conditions should not be to terrorise the accused. In support of his said view, the learned counsel would cite the following decisions:

- (i) VALAMPURI JOHN V. PETER JAMES [1997(2) MWN (CR.) 196
- (ii) VALIULLAZ SHERIF V. STATE BY INSPECTOR OF POLICE, ALL WOMEN POLICE STATION, NELLORE [2000(3) MWN 28
- (iii) SIRUGUDUGU NAGA VENKATA DURGA KUMARI V. SIRUGUDU JHANSILAKSHMI [(2007) 2 MLJ (Cr1) 1668]
- (iv) INDER MOHAN GOSWAMI AND ANOTHER V. STATE OF UTTARANCHAL AND OTHERS [(2007) 12 SCC 1]

9. Courts must protect the rights of the accused. But, at the same time, the court has to see that the offenders are prosecuted. This legal philosophy could be seen as a current judicial thing [SANJAY CHANDRA VS.C.B.I [2012(1)SCC 40] also

known as 2G scam case. While striking a balance between these two extremes, cause of justice cannot be compromised. Now the fear of the petitioner is that as and when he shows his face, there is possibility of he being sent to jail. When he files recall petition, it is an indication that he will participate in the court proceedings. At the same time, there is fear of psychosis on the prosecution that the accused may put bottle necks in the administration of criminal justice. Now the law is very clear. Accused cannot be asked to present in court as a condition precedent to recall the NBW.

10. Ordered as under:

(i) The learned Special Judge/Chief Judicial Magistrate, Chengalpattu will entertain the Recall Petition of the petitioner without insisting upon his presence in the court.

(ii) The recall petition shall be represented on 05.03.2016 before the learned Judge.

(iii) The Trial Court will allow the recall petition and also direct the police to return the NBW.

(iv) The learned Special Judge/Chief Judicial Magistrate, Chengalpattu will continue the proceedings as devised under the Code of Criminal Procedure, 1973.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judge/Chief Judicial Magistrate, Chengalpattu

2. Inspector of Police, सतयमेव जयते
Vigilance and Anti-Corruption,
City II Detachment,
Chennai-35,

3. .The Public Prosecutor,
High Court, Madras.

+1 cc to N.Manokaran, Advocate, sr.13361

CrI.O.P. No.4514 of 2016

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