

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.6242 of 2016

and

Crl.MP.No.3252 of 2016

1. T.Lakshmi
2. S.Rathinam

...Petitioners

Vs.

State rep. by
Inspector of Police
Bramadesam Police Station,
Tindivanam Taluk,
Villupuram District.
(Cr.No.349/13)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C to direct the Judicial Magistrate-II, Tindivanam to recall the witness warrants issued against the petitioners and conduct the denovo trial at fresh in CC.No.56 of 2014 on the file of the Judicial Magistrate-II, Tindivanam.

For Petitioners : Mr.M.Prabakar

For Respondent : Mr.C.Emalias
Addl. Public Prosecutor

O R D E R

This criminal original petition has been filed with the following prayer: "to direct the Judicial Magistrate-II, Tindivanam to recall the witness warrants issued against the petitioners and conduct the de novo trial at fresh in CC.No.56 of 2014 on the file of the Judicial Magistrate-II, Tindivanam."

2. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the State.

3. Today, Mr.A.Nagarajan, Inspector of Police, Brammadesam Police Station, Villupuram District is present.

4. There was no representation for the petitioners on 22.11.2016. Therefore, the matter was posted on 23.11.2016. On that day also, there was no representation for the petitioners. Hence, today, the matter is posted under the caption "for dismissal". Today also, there is no representation for the petitioners.

5. It is seen that the petitioners are witnesses in CC.No.56 of 2014 pending on the file of the Judicial Magistrate No.2, Tindivanam for offences under Sections 147, 148, 294(b), 324, 323, 341 and 506(ii) IPC against Samikannu and six others. For the reasons best known to the petitioners, they have not appeared before the trial Court to give evidence in CC.No.56 of 2014. Therefore, the trial Court was constrained to issue bailable warrant for securing the presence of the petitioners to give evidence in this case. Challenging the bailable warrant, the petitioners are before this Court.

6. In the considered opinion of this Court, the petitioners are deliberately not appearing before the trial Court in order to keep the Damocles sword hanging over the head of the accused for oblique motive. Whenever bailable warrant is issued for the appearance of a witness, it is a common practice in the trial Court to re-call the bailable warrant, the moment the witness appears for giving evidence. Instead of appearing before the trial Court, the petitioners are approaching this Court to re-call the bailable warrant, which is, not maintainable.

7. Hence, this petition is dismissed as being devoid of merits. Consequently, connected miscellaneous petition is closed.

8. The respondent police is directed to secure the petitioners for execution of the bailable warrant. If the police are not able to secure the petitioners, the trial Court may proceed with the further trial by dispensing with their presence and proceed to dispose of the case in CC.No.56 of 2014 in accordance with law.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Judicial Magistrate NO.II,
Tindivanam.

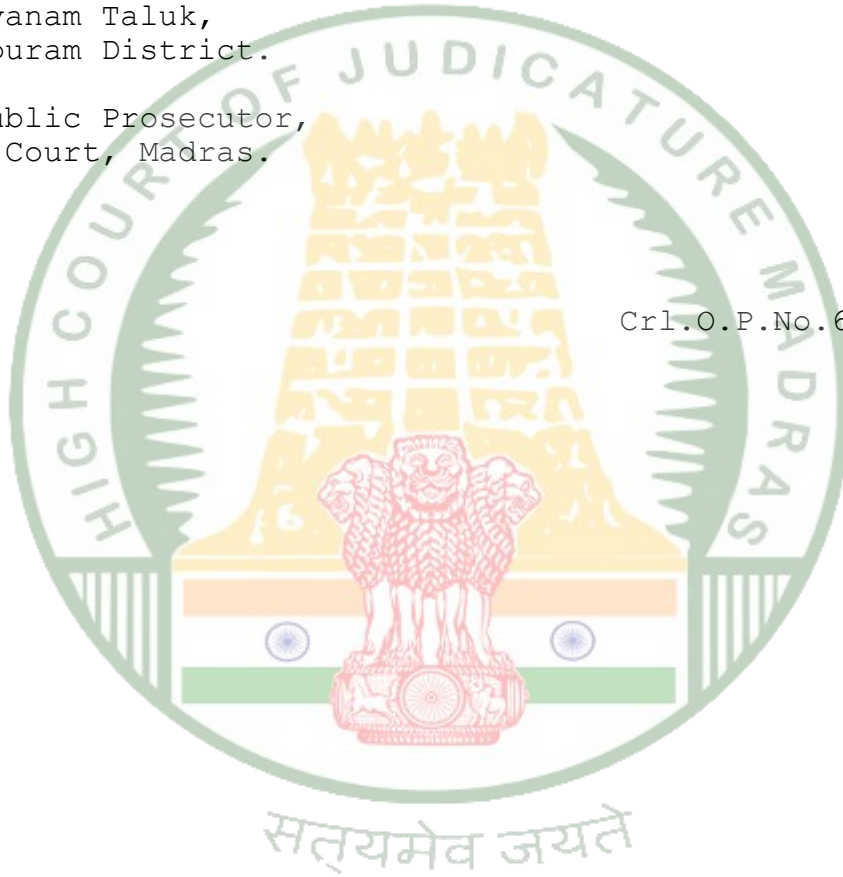
2.do thro'The Chief Judicial Magistrate,
Villupuram.

3. The Inspector of Police
Bramadesam Police Station,
Tindivanam Taluk,
Villupuram District.

4. The Public Prosecutor,
High Court, Madras.

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krd 23/12

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