



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2016

CORAM:

THE HONOURABLE DR. JUSTICE S.VIMALA

CrI.O.P.(MD).No.10628 of 2016

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Felix Suresh Peter .. Petitioner/ Sole Accused
Vs.

1.The Inspector of Police,
Peraiyur Police Station,
Madurai District.

.. 1st respondent/Investigating agency

2.V.Radhakrishnan

.. Respondent/Defacto complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to consider the petition filed to recall the non bailable warrant dated 24.05.2016 issued against the petitioner by the learned District Munsif cum Judicial Magistrate, Peraiyur, on the same day.

For Petitioner : Mr.M.Saravanan

For respondents : Mr.A.P.Balasubramani,
Government Advocate
(Criminal side)

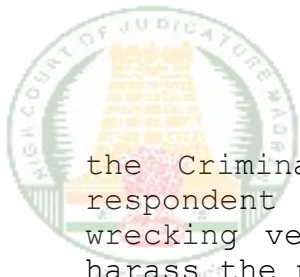
ORDER

Liberty is the natural and inalienable right of every human being recognised and protected by Article 21 of the Constitution of India. Complaining that the personal liberty of the petitioner is infringed, except in accordance with the procedure established by law, this petition has been filed by the Inspector of Police, Nanguneri Circle, seeking to quash the order of the learned Judicial Magistrate, Peraiyur, issuing Non Bailable Warrant against him dated 24.05.2016 [despite the filing of the application seeking to condone his absence].

2.Heard the learned counsel for the petitioner and the learned Government Advocate (CrI. Side) for the first respondent. In view of the limited relief sought for by the petitioner, notice to the second respondent herein is dispensed with.

3.The second respondent herein, as the Manager of a bus company, seems to have filed a private complaint against the petitioner herein and the same has been registered under Sections 342 and 323 IPC and the case is pending in C.C.No.560 of 2013.

4.It is submitted by the learned counsel for the petitioner that the private complaint was filed by the defacto complainant / second respondent as a counterblast to the earlier legal action taken by the petitioner herein in his official capacity while functioning as Sub Inspector of Police, at T.Kallupatti Police Station, Madurai District. <https://hcservices.courts.gov.in/hcservices> a case was registered by the petitioner against the second respondent herein in Crime No.220 of 2003 in respect of the offences under Sections 75 of the Madras City Police Act and 7(1)(a) of



the Criminal Law Amendment Act. It is alleged that as the second respondent herein was arrested and sent to judicial custody towards wrecking vengeance, this private complaint has been used as a tool to harass the petitioner.

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5. The grievance of the second respondent herein is stated to be that his driver was not released on bail at the Police Station itself and the petitioner herein registered a case in Crime No.220 of 2003 against the second respondent for the offences committed by him in front of the Police Station.

6. The petitioner is facing trial in C.C.No.560 of 2013 for the offence under Sections 342 and 323 I.P.C. The case against the bus driver and the second respondent herein are also stated to be pending in the same Court.

7. The learned counsel for the petitioner submitted that because of the law and order problem in Nanguneri circle, the petitioner could not appear before the Court on 24.05.2016 and despite petition being filed under Section 317 Cr.P.C., the learned Magistrate has chosen to issue non bailable warrant. He would further submit that the non bailable warrant issued is arbitrary, illegal and against law and therefore, it should be set aside.

8. In order to appreciate this contention, it is necessary to look into the provision of Section 317 Cr.P.C. under which the petition has been filed by the petitioner herein:

"317. Provision for inquiries and trial being held in the absence of accused in certain cases.

(1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately."

9. If the Judge or Magistrate is satisfied that (1) the personal attendance of the accused before him is not necessary in the interest of justice or (2) the accused persistently disturbs the proceedings, then where he is represented by a pleader his personal attendance may be dispensed with.



10. Section 317 provides for enquiries and trials being held in the absence of the accused person in certain cases. In all trivial and technical cases not involving moral turpitude where the accused are ladies, old and sickly persons, factory workers, labourers, busy business people, managers, partners, directors of companies and industrialists, the Court may exempt such persons from personal attendance.

11. The very existence of the Courts is for dispensation of justice. The process of Courts should not be used for harassment of parties. The insistence on the appearance of parties before Court need be only if it becomes absolutely necessary for some purpose. The Courts are entitled to compel the appearance of the accused. But, such insistence should not be for the mere pleasure of the accused being seen in the dock. To insist on his appearance on a day when his appearance has nothing to do with the progress of the case will only result in unnecessary harassment, especially when he had some inconvenience and his counsel is prepared to represent him.

12. The Court is expected to take into account various factors such as nature, seriousness of the offence, character of the evidence, the possibility of the accused absconding, circumstances peculiar to the accused under which accused is not likely to abscond and also the larger interest of the society.

13. So far as this case is concerned, a perusal of the notes paper reveal that on 24.05.2016, the complainant was absent and the petition filed for his absence has been allowed. On the very same day, the accused had been absent and the petition filed by him under Section 317 Cr.P.C. has been dismissed. When the complainant himself was absent and there is no likelihood of the trial being proceeded with, it is not known what made the Court below to dismiss the petition filed by the petitioner under Section 317 Cr.P.C. Presence of the accused may be necessary for the purpose of identification, (where identity / involvement is in dispute) or to answer questions under Section 313 Cr.P.C. or to answer on the question of sentence, etc. The offences for which the accused is tried are under Sections 342, and 323 IPC. The possibility of absconding is very remote as he is likely to lose the job in case of so doing.

14. Issuance of non bailable warrant involves arrest, imprisonment, consequent deprivation of liberty and therefore, the Courts have to be extremely careful before issuing non bailable warrant. Without scrutiny of the entire facts and circumstances of the case and complete application of mind, the Court should not exercise the discretion in favour of issuing non bailable warrant. The Court must decide whether issuance of non bailable warrant is the only way to get the presence of the accused. When there is no intentional non appearance of the accused, the Court can either issue summons or bailable warrant or issue instructions to the accused through pleader asking for the appearance before the Court.



15. So far as the facts and circumstances of this case is concerned, in the light of the factors discussed above, the issuance of non bailable warrant should have been avoided by the learned Magistrate.

16. It is appropriate to quote the decision of the Hon'ble Supreme Court reported in **1976 (3) SCC 1 (State of U.P. Vs. Poosu and another)**.

"Whether in the circumstances of the case, the attendance of the accused respondent can be best secured by issuing a bailable warrant or non- bailable warrant, is a matter which rests entirely in the discretion of the court. Although, the discretion is exercised judiciously, it is not possible to computerize and reduce into immutable formulae the diverse considerations on the basis of which this discretion is exercised.

The issuance of non-bailable warrants involves interference with personal liberty. Arrest and

imprisonment means deprivation of the most precious right of an individual. Therefore, the courts have to be extremely careful before issuing non-bailable warrants."

17. Coming back to the facts of the case, when the petitioner is a Government servant, especially in a disciplined force, there is no likelihood of the accused fleeing away from the justice. Under such circumstances, the Court should have been lenient in allowing the petition filed under Section 317 Cr.P.C. for his absence. When the lawful process has been resorted to by the accused explaining the circumstances under which he was unable to appear and more especially when his appearance on that date was not indispensable, the issuance of Non-Bailable Warrant is not justified.

18. Under such circumstances, the non bailable warrant issued by the learned District Munsif cum Judicial Magistrate, Peraiyur, in C.C.No.560 of 2013 against the petitioner herein is set aside.

19. The personal appearance of the petitioner need not be insisted for future hearing, unless his presence is indispensable, having regard to the nature of the public / official duty being performed by the petitioner.

20. It is better if the learned Magistrates refrain from issuing non bailable warrant without considering the facts and circumstances and also restrain from issuing such warrant at the moment at which the accused fails to appear before the Court. NBW is not to be issued except where it is the only way to secure the presence of the accused. Unless forced by the compelling circumstances, the learned Magistrates may resort to the practise of issuing a bailable warrant as contemplated under Sections 73 Cr.P.C.



21.This Criminal Original Petition is disposed of accordingly.

Sd/

Assistant Registrar(CS-I)

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Sub Assistant Registrar

To

1.The District Munsif cum Judicial Magistrate,
Peraiyur.

2.The Inspector of Police,
Peraiyur Police Station,
Madurai District.

3.The Addl. Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.M.Saravanan, Advocate in SR.No.34194

Cr1.O.P(MD)No.10628 of 2016

30.06.2016

gcg

PA/NGM-MP/SAR II/01.07.2016/5P/5C (IT)