



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.07.2016

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

Cr1.O.P.(MD) No.12294 of 2016

M.Radhakrishnan

... Petitioner

-vs-

P.Balasubramani

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to direct the Judicial Magistrate, Fast Track Court at Magistrate Level II, Karur to take the petition filed under Section 70(2) Cr.P.C. on file and dispose the same without insisting the appearance of the petitioner.

For Petitioner : M/s.M.Suresh

For Respondent : No appearance

O R D E R

This petition has been filed for a direction to the Judicial Magistrate, Fast Track Court at Magistrate Level II, Karur, to take the petition **(*)in STC.No.369/2016** filed under Section 70(2) Cr.P.C. on file and dispose the same without insisting the appearance of the petitioner.

2. Heard the learned counsel for the petitioner.

3. The petitioner herein filed an application **(*)in STC.No.369/2016** under Section 70(2) Cr.P.C. seeking to recall the warrant issued against him. At the time, when the petition was presented, the petitioner/accused was not present and therefore, the trial Court returned the petition with an endorsement that the petition against whom warrant is sought to be recalled, is not present.

4. The learned counsel for the petitioner would submit that as per the decision in *Sirugudugu Naga Venkata Durgakumari and others v. Sirugudu Khansilakshmi* reported in 2007(2) MLJ (Cr1) 1009, the presence of the petitioner is not mandatory.



5. However, it is suffice to point out that the proposition that 'the presence of the petitioner is not necessary for filing an application to recall the non bailable warrant' would depend upon the facts and circumstances of each case. So far as this case is concerned, for the first appearance, as the petitioner was not served with summons, the petitioner was not present. Therefore, warrant came to be issued and the petitioner has filed an application to recall the warrant.

6. The learned counsel for the petitioner produced the medical certificate, which shows that the petitioner is not in a position to attend the Court, because of the injury sustained by him and the consequent surgery thereon.

7. Under such circumstances, the trial Court is directed to consider the application **(*)in STC.No.369/2016** filed under Section 70(2) Cr.P.C. for recall of warrant, in the absence of the petitioner. However, it is submitted that on the day, when the warrant is recalled, an application under Section 205 Cr.P.C. would be filed and the said undertaking shall be adhered to.

With the above direction, this petition is disposed of.

Sd/-

Assistant Registrar(Records)

**(*)Amended as per order of this Court
made in CrI.OP(MD)No.12294/2016
dated 31.08.2016 by SVJ.**

Sd/-

Assistant Registrar(Records)

/TRUE COPY/

Sub Assistant Registrar(CS-III)

RR

To

To be substituted to the order already despatched on 11.08.2016.

The Judicial Magistrate,
Fast Track Court at Magistrate Level II,
Karur

+1cc to MR.M.SURESH,Advocate in SR.No. 40788

JAM/11.08.2016/KP/ 2P-3C

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PA/SS-3/SAR III/01.09.2016/2P/3C