



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.07.2016

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

Cr1.O.P. (MD) .No.12315 of 2016

1.V.Jothi Subramaniam
2.Mahalakshmi

... Petitioners/Accused Nos.3&4

-vs-

Mercy Annapoorani

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the Non Bailable Warrant issued by the Judicial Magistrate, Tirumangalam in connection with C.C.No.3/2012 dated 5.2.2016.

For Petitioners : Mr.J.Jeyakumaran

O R D E R

This petition has been filed by A3 and A4 in C.C.No.3 of 2012 praying to set aside the Non Bailable Warrant dated 05.02.2016 issued by the Judicial Magistrate, Tirumangalam.

2. The order dated 05.02.2016 reads as follows:

"Complainant absent. Section 256 petition filed and allowed. A1 present. A2 absent. Section 317 petition filed and allowed. A3, A4 appearance dispensed but their counsel not present. Hence issue NBW to A3 & A4. Call on 19.02.2016."

3.The said order is under challenge on the ground that when the personal appearance of the accused Nos.3 and 4 has been dispensed with by this Court, the order issuing Non Bailable Warrant is illegal and therefore, it is liable to be set aside.

3. A perusal of the typed set of papers would go to show that appearance of A3 and A4 has been dispensed with by this Court and that order has been extended from time to time. But the understanding of the Court below is that when appearance of the



parties is dispensed with, presence of the counsel is required, needs further clarification.

3.1. Petition seeking dispensing with the personal appearance of the accused is filed in the Trial Court under Section 317 Cr.P.C. When such a petition is filed under Section 317 Cr.P.C., in the absence of the accused, presence of the counsel is required to get along with the trial proceedings. Section 317 Cr.P.C. is reproduced hereunder for convenient reference:

"317. Provision for inquires 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 reorded, 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."

3.2. But so far as the order dispensing with the personal appearance passed by this Court is concerned, this direction is issued under a different set of circumstances. In this case, personal appearance is sought to be dispensed with on the ground that the proceedings against the accused persons were abuse of the process of the Court and no offence is made out as against the accused persons. On this ground, the Court has ordered stay of proceedings while dispensing with the personal appearance of the accused. The grounds, based on which personal appearance of the accused persons have been ordered to be dispensed, should have given an indication that presence of the lawyer is also not required, when the personal appearance of the accused is dispensed with. Without understanding this distinction, the Court below has issued non bailable warrant.

4. Moreover, when the complainant herself had been absent and there was no progress in the case, the Court below ought not to have issued Non Bailable Warrant. Therefore the order dated 05.02.2016 directing issuance of Non Bailable Warrant to A3 and A4 is set aside.



5. The petition is ordered accordingly. Consequently, connected Miscellaneous Petition is closed.

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/True Copy/

Sd/-

Assistant Registrar (T&P)

Sub Assistant Registrar

To:

The Judicial Magistrate,
Tirumangalam.

+ 1 CC TO MR.J.JEYAKUMARAN, ADVOCATE IN SR No. 38435

MJ/AR

TE/SK-SKN : 08/08/2016 : 3P/3C

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