



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.06.2016

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

Crl.O.P.(MD) No.7414 of 2016

Shanmugapandian

... Petitioner

-vs-

The Sub-Inspector of Police,
Valliyur, Tirunelveli District.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to direct the learned Judicial Magistrate, Valliyur to receive the petition dated 01.04.2016 filed under Section 70(2) of Criminal Procedure Code and recall the NBW without insisting the petitioner to surrender in connection with a case in S.T.C.No.183 of 2015.

For Petitioner : Mr.T.Ramasamy

For Respondents : Mr.P.Kandasamy
Government Advocate (Crl.side)

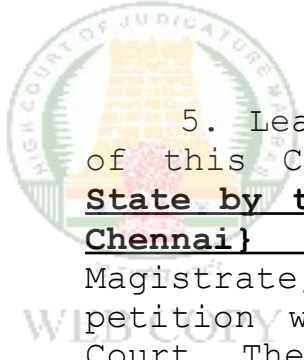
O R D E R

It is a petition seeking a direction to the learned Judicial Magistrate, Valliyur to receive the petition dated 01.04.2016 filed under Section 70(2) Cr.P.C. and recall the NBW without insisting upon the personal presence of the accused in S.T.C.No.183 of 2015.

2. Case is pending against the accused/petitioner in STC No.183 of 2015. When the case was posted for hearing on 28.03.2016, the petitioner did not appear before the Court and that made the Trial Court to issue NBW against the petitioner. This warrant is sought to be recalled without the petitioner being present before the Trial Court.

3. Heard the learned Counsel appearing for the petitioner and the learned Government Advocate (Crl.Side), who takes notice for the respondent.

4. The learned Counsel for the petitioner relied upon a decision of this Court in **Valampuri John V. Peter James** reported in **1997(2), MWN (CR.), 196**, where this Court has permitted the petitioner to recall the petition without insisting upon the presence of him in the Court.



5. Learned counsel for the petitioner relied upon a judgment of this Court passed in CrI.O.P.No.4514 of 2016 **{S.Sundar vs. State by the Inspector of Police, Vigilance and Anti-Corruption, Chennai}** decided on 02.03.2016, where-under Chief Judicial Magistrate, Chengalpet was directed to entertain the recall petition without insisting upon the presence of the accused in Court. The Court considered a fear psychosis on the part of the prosecution that the accused may put bottleneck in the progress of the case and the fear psychosis on the part of the accused that the Court may put him behind the bar during the recalling of warrant and passed such an order. This judgment is an authority for the proposition that petition to recall the warrant can be entertained without the personal presence of the accused, but it is not an authority for the proposition that invariably under all circumstances, irrespective of the conduct of the accused, the proposition can be applied.

5a. In this case, the petitioner did not file an application before the Court on the date of his absence either under Section 317 Cr.P.C., or Section 205 Cr.P.C. However, there is an undertaking that the accused would appear regularly in future and also that the accused would file necessary applications seeking to condone his absence whenever the possibility of attending the Court becomes impossible for him.

6. Considering the representation made, the personal presence of the accused before the Court is not dispensed with having regard to his conduct discussed supra. However, in view of the undertaking given, the petitioner is permitted to file an application to recall the warrant and the learned Magistrate is directed to consider the same on the same day of filing of the application to recall the warrant on merits and in accordance with law.

With this direction, this petition is disposed of.

Sd/-
Assistant Registrar(CS II)

/True copy/

Sub Assistant Registrar

To:

1.The Judicial Magistrate,
Valliyur.

2. The Sub-Inspector of Police,
Valliyur, Tirunelveli District.



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

+1cc to Mr.T.Ramasamy, Advocate SR.No.27723

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CrI.O.P. (MD) No.7414 of 2016