



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

C.R.L.RC(MD) No.325 of 2016

WEB COPY

Commissioner M.C.James

Territorial Commander Salvation Army

India South Eastern Territory

Maharaja Nagar P.O.Palayamkottai, Tirunelveli District

now residing at Sheik Hafizuddin

Byculla, Mumbai-400 008

... Petitioner / Petitioner /
Accused

-vs-

John Murary

... Respondent / Respondent /
Complainant

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to call for the records of the learned Judicial Magistrate No.II, Nagercoil, in C.M.P.No.2906 of 2016 in C.C.No.223 of 2010 and set aside the order, dated 13.04.2016.

For Petitioner: Mr.P.Saravanakumar

O R D E R

As the point involved is narrowly covered by legal decisions, we shall dispose of this revision petition today at the admission stage itself.

2. The accused in a defamation case challenges dismissal of his petition to recall the N.B.W. issued against him since he has not surrendered himself before the Court.

3. Earlier, in N.B.W. recall petitions, surrender petition and surrender of the accused was also insisted upon. Now, it is not a condition precedent to do so (See ***S.Sundar vs. State, Inspector of Police, Vigilance and Anti-Corruption, Chennai, 2016-1-L.W.(Cr1) 506***). N.B.Ws., are also issued to enforce the attendance of the accused, who have failed to attend the Court. When the accused expresses his inclination to appear before the Court and participate in the Court proceedings, there is no point in insisting upon his very physical presence as a condition to recall the N.B.W. But, at the same time, it cannot be a licence for the accused to bid good-bye always to the Court. It is his bounden duty to participate in the Court proceedings.



4. Now, in this case, the Magistrate seems to have been disturbed by his absence for 12 hearings. Let him have an opportunity to amend himself. Proper focus should be on achieving progress in the trial of the case than securing his presence in the Court, when especially he came forward to contribute to the progress of the trial. So, the possibility is progress and not procrastination. Pragmatism is better than theoretical and futile exercises.

5. Now, it is ordered as under:

- i. This criminal revision is allowed.
- ii. The Order, dated 13.04.2016, passed in C.M.P.No.2906 of 2016 in C.C.No.223 of 2010, by the learned Judicial Magistrate No.II, Nagercoil, is set aside.
- iii. The learned Magistrate will restore the recall petition to file.
- iv. As a condition precedent to recall the N.B.W., the presence / surrender of the accused need not be insisted upon.
- v. The Magistrate will recall the N.B.W.
- vi. It is made clear that hereafter the revision petitioner / accused shall regularly attend the Court for all the hearings unless his absence is condoned by a petition filed under Section 317 Cr.P.C.

Sd/-

Assistant Registrar(CS-I)

/TRUE COPY/

Sub Assistant Registrar

To:

- 1.The Judicial Magistrate No.II, Nagercoil.
- 2.-DO-THRO- The Chief Judicial Magistrate, Nagercoil

+1cc to Mr.P.Saravanakumar SR NO: 28212

Krk

JA/ARK-PV/SAR.3/14.06.2016/2P-4C

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