



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2016

CORAM

THE HONOURABLE DR. JUSTICE P.DEVADASS

Crl.R.C. (MD) No.486 of 2016

WEB COPY

B.Annamalai

... Petitioner/Accused No.5

Vs.

State represented through
the Inspector of Police,
EOW II,
Madurai,
(Crime No.11 of 2000).

... Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Sections 397 r/w. 401 of Cr.P.C., against the order passed in Cr.M.P.No.805 of 2016 in C.C.No.5 of 2015 on the file of the Chief Judicial Magistrate, Madurai dated 04.07.2016.

For Petitioner : Mr.C.Vakeeswaran

For Respondent : Mrs.S.Prabha
Govt. Advocate (Crl.side)**ORDER**

Practically, this revision petition could be termed as petition to recall N.B.W.

2. There are 7 accused, who are being prosecuted before the learned Chief Judicial Magistrate, Madurai in C.C.No.5 of 2015, for their alleged commission of certain economic offences. The personal appearance of the petitioner/A5 has been dispensed with by this Court, while disposing of his quash petition in Crl.O.P.(MD).Nos.12416 of 2011 and 648 to 650 of 2015.

3. In this case, trial has started. Prosecution witnesses are being produced. In the circumstances, on 16.06.2016, prosecution produced witness Nos.20 and 21. Since none has represented the petitioner/A5, not even his counsel was present, his absence was noted by the Court and N.B.W. was ordered against A5. Consequently, the witnesses could not be examined.

4. Subsequently, on 04.07.2016, the petitioner filed Cr.M.P.No.805 of 2016 to recall N.B.W. without appearing in person, however, quoting certain decisions of this Court.

5. The trial Court on holding that in the facts and circumstances of this case, those decisions are not applicable to this case and dismissed his N.B.W recall petition.



7. At this juncture, he is before us questioning the legality of the Trial Court's order, dated 04.07.2016.

8. According to the learned counsel for the petitioner, due to his ill-health, for reasons beyond his control, he could not attend, he may be given an opportunity and he will co-operate with the trial of the case.

9. On the other hand, the learned Government Advocate (Crl.side) submitted that because of his conduct, trial was spoiled on 16.06.2016. This is what also has been the stand of the prosecution in their report to the Court.

10. I have anxiously considered the rival submissions, perused the impugned order and also the materials on record.

11. In order to ease out the crowd and make the atmosphere of the criminal Court congenial, liberal, use of Section 205 of Cr.P.C., has been advocated. That is how, petitions to dispense with the personal appearance of the accused before the Trial Courts are being flooded the Courts. Further, when the attendance of the accused is absolutely not necessary for the hearing of the case which is used to be called 'formal hearing', there is no use or purpose in making him to attend the Court. It results crowds being gathered inside the Court. The concentration of the Prosecution, Defence and also the Court get affected. It becomes a waste of time, energy and money. So, courts dispense the personal/physical appearance of the accused.

12. Normally, when personal appearance of the accused is dispensed with, it goes without saying that it is the responsibility of the accused to make some arrangements through a learned counsel to look after his interest in the case. Further, if his appearance is really necessary, such as, for recording his plea, when his identity is involved, for his examination under Section 313 Cr.P.C., for his questioning on sentence, for his presence to hear the judgment, for sending him to jail or even to hear pronouncement of verdict of acquittal, or for any reason, when the physical presence of the accused in the Court is absolutely necessary, the Court can insist upon his physical presence in the Court.

13. Sometimes, when the personal appearance of the accused is dispensed with and the accused is being represented by a learned defence counsel and when witnesses are produced and if the learned defence counsel is not present, certainly, the interest of the accused would be at stake, further it would be a problem for the Court to transact judicial business in the said case, on the hearing day, as it has happened in the present case.

14. On 16.06.2016, it is stated that the learned defence counsel was elsewhere. In such circumstances, the learned Chief Judicial Magistrate having noticed that two witnesses were produced by the prosecution and they could not be examined because of the absence of petitioner's lawyer ordered issuance of NBW against the petitioner, subsequently, when the petition to recall the NBW was filed, naturally the trial court has to



be tougher. For this sorry state of affairs, the accused have to be blamed and the learned defence counsel also contributed for such a situation.

15. But, let us not make any deep research into this when especially, the petitioner seeks an opportunity to co-operate the trial of the case. If we go on finding fault with each and every thing, ultimately, reach the end of the case will get spoiled. Pragmatism is the need of the hour.

16. In the circumstances, ordered as under:

(I) This revision is allowed.

(2) The impugned order dated 04.07.2016 passed in Cr.M.P.No.805 of 2016 in C.C.No.5 of 2015 by the learned Chief Judicial Magistrate, Madurai, is set aside.

(3) The revision petitioner/A5 shall surrender before the trial Court on or before 08.08.2016.

(4) On his such surrender, the learned Judge will recall the NBW, in default, the respondent will execute the N.B.W.

(5) It is made clear that as already his personal appearance has been dispensed with, as and when the trial Court directs his appearance for any effective hearing, the revision petitioner shall make his appearance and for all the hearings, the petitioner must engage a defence counsel to defend him and look after his interest in the case.

Sd/

Assistant Registrar(AS)

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Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
Madurai.

2. The Inspector of Police,
EOW II,
Madurai.

3. The Additional Government Advocate,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.C.Vakeeswaran, Advocate in SR.No.37624

Cr1.R.C. (MD) No.486 of 2016
19.07.2016

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PA/NGM-MP/SAR III/28.07.2016/3P/5C