

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2017

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THE HONOURABLE MR.JUSTICE **M.S.RAMESH**

CrI.O.P No.4345 of 2017

1.M.Deivamani
2.Minor Saravanan
3.Minor Keerthana

.. Petitioners

Vs.

1. M.Murugan
2. State rep. by
The Inspector of Police,
Kallakurichi Police Station,
Kallakurichi Taluk,
Villupuram District.

.. Respondents

Prayer:- Criminal Original Petition is filed under Section 482 Cr.P.C., to direct the second respondent to execute theailable warrant issued against the first respondent by the learned Judicial Magistrate, Kallakurichi in C.M.P.No.7049 of 2016 in M.C.No.31 of 2012 forthwith.

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For Petitioner : Mr.B.Singaravelu

For Respondent-2 : Mr.P.Govindarajan,
Additional Public Prosecutor

ORDER

This petition is filed seeking a direction to the second respondent to execute the bailable warrant issued against the first respondent by the learned Judicial Magistrate, Kallakurichi in C.M.P.No.7049 of 2016 in M.C.No.31 of 2012.

2.This Court in an earlier occasion had elaborately dealt with the issue as to whether the High Court, exercising its inherent powers under Section 482 of the Code of Criminal Procedure, is empowered to quash or recall a Non-bailable Warrant when an alternate remedy under Section 70 (2) of the Code of Criminal Procedure empowers cancellation of the warrant by the court that had issued the warrant.

3. After analysing the principles laid down in the various decisions of the Honourable Supreme Court in detail, this Court in the order dated 07.09.2017 in CrI.O.P.No.13276 of 2017 etc., batch, has held as follows:

18.It is also brought to my notice that apart from various other reasons for the long pendency of cases before the trial Courts, the non execution of Non Bailable Warrant is one among the reasons. This fact is reiterated through the last data collected by the NCRB. In most of these pending

cases, it is seen that whenever a Non Bailable warrant is kept pending execution, the usual practice among many of the Court is to adjourn the case on the ground that "Non Bailable Warrant is pending".

19. In heinous crimes, where there is deliberate and continuous non appearance of the accused, the trial Court may proclaim him as person absconding under Section 82 of the Code of Criminal Procedure.

20. Thus, under Section 82 of Cr.P.C., there can be no impediment on the part of the trial Court to pronounce him as a proclaimed offender, instead of keeping the matter pending indefinitely for the purpose of having the warrant executed. Hence, the existence of the fourth category of cases cannot be a ground to preclude the High Court to do justice in the first three categories particularly, when they constitute a major portion of the pending cases in the State of Tamil Nadu, in which, Non Bailable Warrants are pending execution.

21. To sum up the findings rendered by me, it is reiterated that the issuance of Bailable Warrant or Non Bailable Warrant should be exercised with extreme caution and in the rarest of cases, bearing in mind that the pendency of Non Bailable Warrant is one of the major factors for the long pendency of cases before the trial Court. The trial Court shall also scrupulously follow the guidelines imposed in Inder Mohan Gowsami's case (supra) as well as the observations made in the present case while issuing Non Bailable Warrants or recalling the Non Bailable Warrants.

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4. In the present case though the Non-bailable warrant was issued as early as on 03.10.2016, it has been kept pending without execution till date. In view of the observations made in the earlier order extracted above it would be appropriate to re-call the warrant issued by the Trial Court.

5. Hence, this Criminal Original Petition stands allowed. Bailable warrant issued on 03.10.2016 is recalled. Consequently, the accused is directed to appear before the learned Judicial Magistrate, Kallakurichi in C.M.P.No.7049 of 2016 in M.C.No.31 of 2012 forthwith and on subsequent hearing dates without fail.

12.09.2017

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To

1. The Inspector of Police,
Kallakurichi Police Station,
Kallakurichi Taluk,
Villupuram District.

2. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.4345 of 2017