

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.07.2017
CORAM:
THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
Crl.R.C.No.886 OF 2017

Karthick

: Petitioner/Accused No.3

versus

State rep. By the
Sub Inspector of Police,
Bhavani Police Station,
Cr.No.185 of 2016,
Erode District

: respondent /Complainant

Revision filed against the order dated 8.6.2017 in C.M.P.No.3225 of 2007 in PRC No.9 of 2016, passed by the learned Judicial Magistrate, Bhavani and set aside the same.

For petitioner : Mr.N.Manokaran

For respondent : Mr.R.Sekar,
Government Advocate (Crl.Side)

O R D E R

This revision case is filed against the order dated 8.6.20017, in C.M.P.No.3225 of 2017, by the learned Judicial Magistrate, Bhavani. By the said order, the learned Trial Judge has rejected the petition filed to recall the warrant issued against the petitioner.

2. The main reason adduced by the Trial Court for dismissing the said petition is that after issuance of non bailable warrant, petition was filed after a period of 11 months and that the petitioner has not filed any surrender application. Also, the reasons adduced by the petitioner in support of the petition to recall non bailable warrant were not convincing and acceptable. Therefore, the Trial Court has dismissed the said petition.

3. Heard Mr.N.Manoharan, learned counsel for the petitioner and Mr.R.Sekar, Government Advocate (Crl. Side) for the respondent.

4. The learned counsel for the petitioner would rely upon the following decisions :-

- (a) 2007(12) SCC 1 - (Inder Mohan Goswami and anr.
vs. State of Uttaranchal and Ors.)

(b) 2014(2) LW (Crl.) 616- (Karuppiah @ Chinnathambi vs.
Inspector of Police,
Embal Police Station)

(c) 2017(1) LW Crl.897 - (Dr.Zubaida Begum vs.
Inspector of Police
Kanchipuram District)

5. By relying upon these decisions, the learned counsel for the petitioner would submit that at the time of entertaining the petition to recall the non bailable warrant, presence of the accused need not be insisted upon by the Court concerned. In this regard, the learned counsel would invite the attention of this Court to the following observations made by the Hon'ble Supreme Court in Inder Mohan Goswami cited supra. In paragraphs 53 to 57, the Hon'ble Supreme Court has held as under :-

"When non-bailable warrants should be issued

53. Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:

* it is reasonable to believe that the person will not voluntarily appear in court; or

* the police authorities are unable to find the person to serve him with a summon; or

* it is considered that the person could harm someone if not placed into custody immediately.

54. As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.

55. In complaint cases, at the first instance, the court should direct serving of

the summons along with the copy of the complaint. If the accused seem to be avoiding the summons, the court, in the second instance should issue bailable-warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the courts proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount, therefore, we caution courts at the first and second instance to refrain from issuing non-bailable warrants.

56. The power being discretionary must be exercised judiciously with extreme care and caution. The court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straight-jacket formula for issuance of warrants but as a general rule, unless an accused is charged with the commission of an offence of a heinous crime and it is feared that he is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided.

57. The Court should try to maintain proper balance between individual liberty and the interest of the public and the State while issuing non-bailable warrant."

6. The learned counsel would also submit that in the same line, a learned Judge of this Court has held that the earlier practice of compelling surrender of an accused to recall non bailable warrant has become obsolete. Therefore, the same need not be insisted upon in every case. In this regard, the learned counsel would rely upon paragraph 9 of the judgment in Dr.Zubaida Begum case, (2017(1) LW CrI. 897) which reads thus:-

9. Earlier, when a petition is filed to recall NBW, surrender petition used to be filed and the accused should present/appear/surrender before the Court. Now it has become obsolete. In fact, while sitting in Madurai Bench in Karuppiah @ Chinnathambi vs. The Inspector of Police, Embal Police Station, Avudaiyarkoil Taluk, Pudukottai District '[2014 2 L.W. (CrI.) 616]', I have held that to recall NBW, the presence of the accused need not be insisted

upon. Several decisions of this Court on similar lines are also available. The trial Court simply ignored this settled position of law. Thus, the impugned order in CrI.M.P.No.1289 of 2015 must go.

7. I have also heard Mr.R.Sekar, Government Advocate (Crl.Side), who has submitted that though non bailable warrant was issued against the petitioner, he did not immediately approach the Court below to recall the same. Only after 11 months, the said petition has been filed. Excepting the reason that he had an apprehension that if he surrenders, he may be arrested, no other reason was adduced by the petitioner for not approaching the Trial Court to recall the non bailable warrant at the earliest point of time. Since the petitioner has not adduced any acceptable reasons for not appearing before the Trial Court, his petition was rightly dismissed by the Court below and therefore, no interference is called for in the said order.

8. I have heard the rival submissions made by both sides.

9. As has been pointed out by the learned counsel for the petitioner, it is not hard and fast rule that in each and every N.B.W. case, the accused must surrender and seek for recall of warrant. At the same time, it cannot also be stated that in every case, non bailable warrant shall be recalled without the accused surrendering before the Court concerned.

10. The said dictum, in the opinion of this Court, could be applied in the given facts and circumstances of each case. As far as the present case is concerned, the petitioner has given reason that he was suffering from viral fever and because of that he could not be present before the Court. Even for the absence on a particular day, straightaway, non bailable warrant was issued. Moreover, in this case, there are five accused, including the petitioner. All the other four accused, except the petitioner, have been enlarged on bail. The petitioner alone, since he has not appeared before the Court on the particular date, has been facing the non bailable warrant.

11. On a careful consideration of the rival submissions and dictum of the Hon'ble Supreme Court, this Court is of the considered view that the petitioner could be directed to surrender before the Court below and file a recall petition. If such a petition is filed, the same can be taken up and disposed of by the Court below on the very same day.

12. In the result, the following orders are passed in this criminal revision petition.

1. The petitioner shall surrender before the Court below and on the said day, he shall file a petition to recall the non

bailable warrant;

2. On such petition being filed by the petitioner, the same shall be taken into consideration and decided by the Court below;
3. While deciding the same, it is needless to mention that the aforesaid dictum of the Hon'ble Supreme Court as well as this Court with regard to the issuance of non bailable warrant and recalling the same shall be taken into account, based on which, order to that effect shall be passed by the Court below on the same date itself.

13. With these observations and directions, this criminal revision case is disposed of. Consequently, CRL.M.P.No.8299 of 2017 is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate, Bhavani

2.The Chief Judicial Magistrate
Bhavani

3.The Inspector of Police,
Bhavani Police Station,
Erode District

4.The Public Prosecutor, Madras High Court

+1 cc to Mr.N.Manokaran Advocate sr 46524

CrI.R.C.No.886 OF 2017

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