



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:09.10.2017
CORAM:

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P. (MD) No.13602 of 2017

Rajesh

: Petitioner

-Vs-

1.Dr. Sharmila
2.R.Priya(minor)
3.R.Jyothika(minor)
minors rep. by R1

: Respondents

PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, to direct the Family Court, Madurai to entertain the petition to recall non-bailable warrant (NBW) issued on 07.12.2016 and surrender petition that will be filed by his counsel in Crl.M.P.No.291 of 2015 in M.C.No.65 of 2014 without requiring physical presence of the petitioner and with further direction to dispose the petition to recall NBW on the same day of filing.

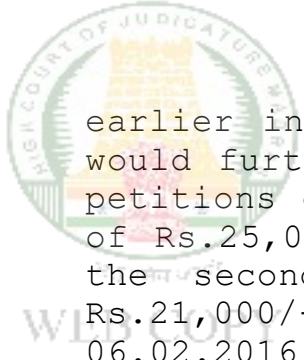
For Petitioner

: Mr.J. Praveen

O R D E R

This petition is filed for issuing a direction to the Family Court, Madurai to entertain the petition to recall non-bailable warrant (NBW) issued on 07.12.2016 and surrender petition that will be filed by his counsel in Crl.M.P.No.291 of 2015 in M.C.No.65 of 2014 without requiring physical presence of the petitioner and with further direction to dispose the petition to recall NBW on the same day of filing.

2. The petitioner states that the first respondent has filed Maintenance Petition in M.C.No.65 of 2014 on the file of Family Court, Madurai. It is stated that the first respondent also filed another petition in M.C.No.307 of 2014 before the Additional Mahila Court, Madurai, by suppressing the petition filed for maintenance earlier in M.C.No.65 of 2014. It is stated by the learned counsel appearing for the petitioner that though the petition filed by the first respondent in M.C.No.307 of 2014 before the Additional Mahila Court, Madurai, under the provisions of Protection of Women from Domestic Violence Act, the first respondent ought to have disclosed the petition filed by her

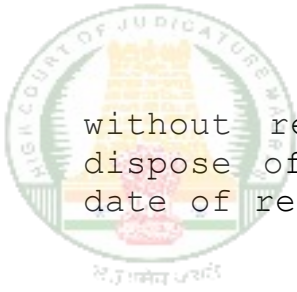


earlier in M.C.No.65 of 2014, under Section 125 of Cr.P.C. He would further state that ex parte orders were passed in both the petitions directing the petitioner to pay in the first case a sum of Rs.25,000/- per month to the respondents on 27.11.2015 and in the second case directing the petitioner to pay a sum of Rs.21,000/- towards monthly maintenance to the respondents on 06.02.2016. The petitioner further states that due to personal incapacity he could not appear before the Family Court, Madurai, and that a Non Bailable Warrant was issued against the petitioner on 07.12.2016.

3. He further contended that a petition to recall the non-bailable warrant issued on 07.12.2016 in CrI.M.P.No.291 of 2015 in M.C.No.65 of 2014 is filed before the Family Court, Madurai. Since the petitioner is working in private college at Manipal, he states that he cannot get longer leave to attend the case for marking his presence, as he has to travel the distance of 700 kms, spending 15 hours for his journey. It is in these circumstances, the petitioner seeks indulgence of this Court to dispense with his physical presence to present the petition to recall Non-Bailable Warrant issued against the petitioner. The petitioner has also relied upon the Judgment of this Court reported in **2014(2)LW (CrI.) 616, (Karuppiah @ Chinnathambi Vs. The Inspector of Police, Embal Police Station, Avudaiyarkoil Taluk, Pudukkottai District and others)** and **2014(2) LW (CrI.) 617 (Kandha Subbian Vs. Packialakshmi)**. This Court has held that a direction to recall Non Bailable Warrant and surrender petition can be issued without insisting upon the physical presence of the accused / petitioner for the purpose of recalling the Non Bailable Warrant. Similar view also expressed by the similar Judge in yet another case in the case of **Dr. Zubaida Begum Vs. State rep. by the Inspector of Police, District Crime Brnach, Kancheepuram** reported in **2017-1-L.W. (CrI.) 897**. The learned counsel appearing for the petitioner also states that the petitioner's salary is also attached by the wife for maintenance and a sum of Rs.14,435/- is being deducted from his salary.

4. The first respondent has filed the subsequent application without disclosing the petition filed by her in M.C.No.65 of 2014. Eventhough the subsequent application filed by the wife is under the provision of Protection of Women from Domestic Violence Act there is a relief for maintenance. Since the petitioner is already paying a considerable amount of money towards maintenance, this Court is inclined to allow this petition.

5. As a result, the Criminal Original Petition is allowed and the learned Judge, Family Court, Madurai is directed to entertain the petition filed by the petitioner in CrI.M.P.No.291 of 2015 in M.C.No.65 of 2014, which is filed by the petitioner to recall the Non Bailable Warrant (NBW) on 07.12.2016 and surrender petition



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without requiring the physical presence of the petitioner and dispose of the petition within a period of four weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (Writs)

/True copy/

Sub Assistant Registrar

To
The Judge,
Family Court, Madurai.
+ 1 CC TO MR.Mr.J. Praveen, ADVOCATE IN SR No.81974
trp
MK/MR KKR/SAR-1/26.10.2017/3P/3C

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