

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 15.02.2017****CORAM:****THE HON'BLE MR.JUSTICE G.CHOCKALINGAM****Cr1.O.P. (MD)No.22326 of 2016**

K.Venkatesh

:Petitioner/Accused

Vs.

Akshaya Finance, represented
through its Power Attorney,
A.Arunachalam

: Respondent/Complainant

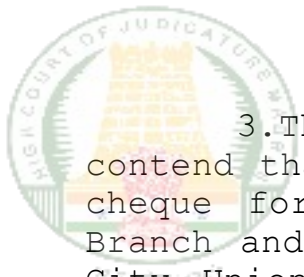
Prayer: This petition is filed under Section 482 of Cr.P.C., to direct the learned Judicial Magistrate, Rajapalayam, to receive the petition under Section 70(2) of Criminal Procedure Code and recall the Non Bailable Warrant issued by the learned Judicial Magistrate, Rajapalayam, dated 13.07.2016 without insisting the petitioner to surrender before the learned Judicial Magistrate, Rajapalayam, Virudhunaga District, in connection with a case in C.C.No.115 of 2014 and pass such further or other orders.

For Petitioner : Mr.R.Alagumani

For Respondent : Mr.M.Karthikeya
Venkatachalapatty**O R D E R**

This petition is filed to direct the Judicial Magistrate, Rajapalayam, to receive the petition filed under Section 70(2) of Cr.P.C and to recall the Non Bailable Warrant issued by the Judicial Magistrate, Rajapalayam, dated 13.07.2016 without insisting the petitioner to surrender before the Judicial Magistrate, Rajapalayam, Virudhunagar District, in connection with a case in C.C.No.115 of 2014.

2.The case of the prosecution is that in a hire purchase agreement, dated 04.12.2012, the petitioner's mother purchased a Hyundai Accent Car and on execution of the agreement, the petitioner borrowed Rs.1,50,000/- agreeing to pay Rs.8,125/- per month as installment (EMI) along with interest on the principal loan amount and in the loan proceedings, the petitioner stood as guarantor.



3.The learned counsel appearing for the petitioner would contend that the petitioner, in the capacity of guarantor, gave a cheque for a sum of Rs.1,43,340/- drawn on IOB, Rajapalayam-I Branch and when the cheque was presented for collection with the City Union Bank, it was returned with the endorsement "Payment Stopped by Drawer" and in this connection, the case pending in C.C.No.115 of 2014 on the file of the Judicial Magistrate, Rajapalayam, came up for hearing on 13.07.2016 and that since, the petitioner's health condition seriously affected from viral fever, he filed a petition under section 317 Cr.P.C before the trial court and that was dismissed and Non Bailable warrant was issued against the petitioner. In view of the above circumstances, the petitioner stands before this court for the reliefs as stated in the petition.

4.The learned counsel appearing for the respondent would contend that the petitioner without appearing before the trial court, has filed this petition only to drag on the trial proceedings. Hence, he prayed for the dismissal of the petition.

5.Heard both sides and perused the materials available on record.

6.It is an admitted fact that the petitioner is a guarantor and issued a cheque in favour of the respondent. It is also admitted that notice was also served on the petitioner. Since the petitioner did not appear before the trial court and for his non-appearance, on valid reason has been given, the trial court issued NBW, as the presence of the petitioner is very much necessary before the trial court. Hence, the petition filed by the petitioner to recall NBW before this court is not at all maintainable.

7.In view of the above circumstances, this court is of the considered view that the relief sought for by the petitioner cannot be granted.

8.In the result, this petition is **dismissed**. However, the petitioner is directed to surrender before the trial court, within a period of 10 days from the date of receipt of a copy of this order and seek appropriate remedy before the trial court itself, failing which, the trial court is directed to execute the NBW within a period of two weeks from the date of expiry of the above said ten days and report the same to the Registry without fail.

Sd/-

Assistant Registrar(Writs)



To,

The Judicial Magistrate,
Rajapalayam.

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+1 cc to MR.K.SUNDARAVEL, Advocate SR.No.8457

Crl.O.P. (MD) No.22326 of 2016
15.02.2017

SMA/JM/24.02.2017:3P/3C