



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE A.M.BASHEER AHAMED

Crl.R.C.(MD)No.313 of 2017
and Crl.M.P.(MD)No.2956 of 2017

V.S.Maharajan

... Petitioner

Vs.

1.Vasanth

2.The Inspector of Police, Natham Police Station,
Dindigul. ... Respondents

PRAYER: The Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C., to call for the records pertaining to the impugned order dated 21.03.2017 in Crl.M.P.No.329 of 2017 in Cr.M.P.No.1438 of 2016 in M.C.No.62 of 2010 on the file of the learned Chief Judicial Magistrate, Madurai and set aside the same and consequently, recall NBW dated 21.02.2017 issued against the petitioner in Cr.M.P.No.1438 of 2016 in M.C.No.62 of 2010 by the learned Chief Judicial Magistrate, Madurai.

For Petitioner : Mr.N.karthik Kanna

For Respondents : Mr.P.Kandasamy, G.A..(Crl.side) for R2

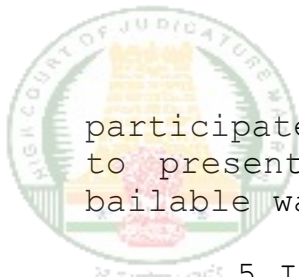
O R D E R

This Criminal Revision case is filed to set aside the impugned order dated 21.03.2017 in Crl.M.P.No.329 of 2017 in Cr.M.P.No.1438 of 2016 in M.C.No.62 of 2010 on the file of the learned Chief Judicial Magistrate, Madurai and also to recall the non bailable warrant dated 21.02.2017 issued in Cr.M.P.No.1438 of 2016 in M.C.No.62 of 2010 by the learned Chief Judicial Magistrate, Madurai.

2.The learned counsel for the petitioner is present.

3.On perusal of the order passed by the Trial Court, the Trial Court has insisted the appearance of the petitioner at the time of filing a petition to recall the non bailable warrant under Section 70(2) Cr.P.C. while N.B.W. issued against him is pending and the Trial Court has dismissed the said petition. Against the said order of dismissal, present Revision is preferred by the petitioner herein.

4.The learned counsel for the petitioner relied on a decision of this Court reported in **2016(1) TNLJ 385 (Criminal) (S.Sundar Vs. State by Inspector of Police, Vigilance and Anti Corruption, City II Detachment, Chennai)** in which it was held that when the petitioner files the recall petition, it is an indication that he will



participate in the court proceedings and the accused cannot be asked to present in court as a condition precedent to recall the non bailable warrant.

5. In the present case on hand also non bailable warrant was issued against the petitioner for his absence before the Trial Court in Cr.M.P.No.1438 of 2016, which was filed under Section 128 Cr.P.C.. When the petitioner filed a petition in Cr.M.P.No.329 of 2017 for recalling the non bailable warrant, the same was dismissed by the Trial Court and directed the petitioner to appear before the Trial Court. The issuance of non bailable warrant is to secure the proper attendance of the accused in the Court proceedings and the same should not be a harassing way of execution in the main petition filed under Section 128 Cr.P.C.

6. The learned counsel appearing for the petitioner submitted that the petitioner is ready to deposit Rs.1 lakh towards arrears of maintenance. He has also produced a demand draft bearing No.483339 dated 31.03.2017 to that effect in the name of the respondent / wife.

7. Considering the facts and circumstances of the case and also considering the reasons assigned for dismissing the recalling non bailable warrant petition filed by the petitioner herein, which is against the tenor of the reported judgment, this Court is inclined to set aside the order passed in Cr.M.P.No.329 of 2017 and to direct the Trial Court recall the NBW without insisting the petitioner to surrender in connection with the proceedings pending before it.

8. Accordingly, the order passed in Cr.M.P.No.329 of 2017 is set aside and the petitioner is directed to appear before the concerned Court and make the payment of Rs.1 lakh in respect of arrears of maintenance. The Criminal Revision Case is ordered accordingly. Consequently, connected Crl.M.P. is closed.

SD/-

ASSISTANT REGISTRAR

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

1. The Chief Judicial Magistrate, Madurai.
 2. The Inspector of Police,
Natham Police Station, Dindigul.
 3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- +1 CC TO MR.N.K.KARTHIK KANNA, ADVOCATE, SR NO.50512

nbj

MAS/RR/SAR3:07.04.2017:2P-5C

<https://hcservices.ecourts.gov.in/hcservices/>

Cr1.R.C. (MD) No.313 of 2017
06.04.2017