



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.01.2017**

CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

Cr1.O.P.(MD)No.23565 of 2016

Viduthalaiveeran

: Petitioner/Accused

Vs.

State rep. by
Inspector of Police,
Othakkadi Police Station,
Madurai District.
(Crime No.59/2008)

: Respondent/Complainant

Prayer: This petition is filed under Section 438 of Cr.P.C., to direct the learned Judicial Magistrate, Melur, to consider the warrant recall application, if any filed by the petitioner under Section 70(2) of Cr.P.C against the Non-Bailable Warrant issued by the learned Judicial Magistrate, Melur, in C.C.No.219 of 2008, dated 14.11.2016 on his surrender on the same day.

For Petitioner : M/s.A.Rajini

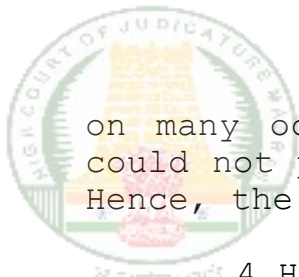
For Respondent : Mr.A.P.Balasubramani
Government Advocate
(Criminal side)

O R D E R

This petition is filed to direct the Judicial Magistrate, Melur, to consider the warrant recall application, if any filed by the petitioner under Section 70(2) of Cr.P.C against the Non-Bailable Warrant issued, in C.C.No.219 of 2008, dated 14.11.2016.

2.The learned counsel appearing for the petitioner would submit that the petitioner has not appeared before the Judicial Magistrate, Melur on 14.11.2016 and 09.01.2017 due to his ill-health and now, the petitioner is ready to surrender before the trial court at any date and hence, suitable direction may be given to the trial court to recall the warrant, in the event of his surrender.

3.The learned Government Advocate (Criminal side) would submit that the petitioner has not appeared before the trial court



on many occasions and due to his non-appearance, the trial court could not proceed the case and the case is pending for a long time. Hence, the petition has to be dismissed.

4. Heard the submissions made on either side and perused the materials available on record.

5. It is seen from the records that this court has called for a report from the Judicial Magistrate, Melur, in connection with the case in C.C.No.219 of 2008 pending on its file. The Judicial Magistrate, Melur, has submitted a report, dated 26.12.2016, wherein, it is stated as follows:-

"2. I humbly submit that lastly the case was taken up on 15.12.2016 and adjudicated as follows:-
"A2, A4 present. Petition U/s.70(2) Cr.P.C along with advance hearing petition filed and allowed. NBW pending against A2, A4 recalled. NBW pending against A1, A3 call on 09.01.2017."

3. I humbly submit that A5 namely Prabakaran @ Balamurugan S/o.Chinnasamy has been appearing and hence as on 26/12/2016 NBWs are pending only as against A1 Viduthalaiveeran and A3 Kamaraj.

4. I humbly submit that on 27/09/2016 A1 Viduthalaiveeran has filed his fourth recall petition the same was allowed on condition but he was absent on the next hearing itself and therefore, this court has constrained to issue fifth time a NBW against the A1 Viduthalaiveeran."

6. On the reading of the above report, it is made clear that even after the 4th recall petition was allowed, the petitioner has not chosen to appear before the trial court in the next hearing. Hence, this court is of the considered view that the petitioner is in the habit of filing recall petition and even though, his recall petition was allowed, he has not chosen to appear before the trial court to prosecute the case. Therefore, the relief sought for by the petitioner cannot be granted.

7. In the result, this petition is dismissed and the trial court is directed to execute the warrant against petitioner/A1 and proceed with the case, on day today basis, in respect of the remaining accused and dispose of the case in C.C.No.219 of 2008 purely on merits and in accordance with law, within a period of 12 weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar

/True copy/



To,

1.The Judicial Magistrate, Melur.

2.The Inspector of Police,
Othakkadai Police Station, Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Er

AAM:SKN-MM:3p/4c/18.01.2017

Cr1.O.P. (MD) No.23565 of 2016
4.01.2017