



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.02.2018

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Original Petition No:4399 of 2018

K.Palaniselvan ...Petitiner/Ist Petitioner/  
2nd Accused  
/versus/

The State Rep.by  
Deputy Superintendent of Police,  
CBI/EOW/Chennai,  
...Respondent/  
Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in CrI.M.P.No.3851 of 2017 in C.C.No.63 of 2009 on the file of the Chief Judicial Magistrate, Puducherry dated 08.12.2017.

For Petitioner : Mr.M.Selvam

For Respondent : Mr.K.Srinivasan,  
Special Public Prosecutor

सत्यमेव जयते

O R D E R

This petition is filed under Section 482 to recall the warrant issued by the Trial Court for non appearance of the petitioner before the Trial Court.

2. When the case was posted for framing the charges, the reason for non appearance has found in the petition is that the petitioner was suffering from ill-health and therefore he could not appear before the Court. However, the trial Court has found that the reason stated is not satisfactory. Despite repeated

instructions, this petitioners along with other two accused have not appeared before the Court on that day, when it was posted for framing charge. The Trial Court has also recorded that already sufficient time is granted to the petitioners but they are not co-operating with the progress of the Trial.

3. Considering the above circumstances and in the interest of the justice, the petition to dispense with the personal appearance came to be dismissed. and warrant has been issued on 08.12.2017.

4. This petitioner instead of surrender before the Court and seeking recall of warrant under Section 70 Clause (2) of Cr.P.C. He had approached this High Court by invoking inherent the power of the High Court.

5. This Court long back has held that Section 482 cannot be invoked to circumvent the provisions of Section 70 Clause (2) of Cr.P.C. Despite the said pronouncement, such applications are filed before this Court.

6. It is needless to say that if the petitioner surrender before the Trial Court with sufficient medical records and explain the court for his non appearance, the trial Court can consider it on merits.

7. With the above observation, Criminal Original Petition No: 4399 of 2018 is dismissed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

bsm

To

1. The Chief Judicial Magistrate, Puducherry.

2. The Deputy Superintendent of Police,  
CBI/EOW/Chennai,

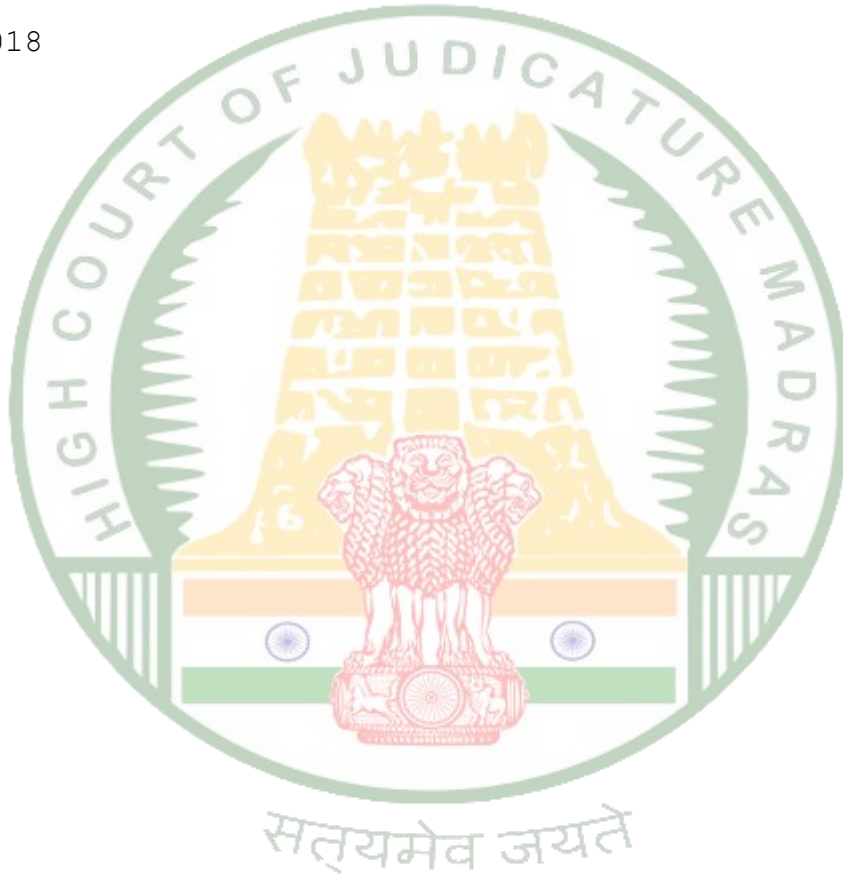
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3. The Special Public Prosecutor, Madras

+1 cc to Mr.M.Selvam Advocate sr 1969

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pvs (co)  
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