

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.08.2018

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THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.20518 of 2018
and Crl.MP.No.11038 of 2018

R.D.Rajasekar

.. Petitioner

Vs

State of Tamilnadu,
Rep. by the Inspector of Police,
E-3, Teynampet Police Station,
Chennai.

.. Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the docket order passed by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai - 15 dated 09.08.2018 made in Crl.M.P.No.2625 of 2018 in C.C.No.4906 of 2018 and allow this Criminal Original Petition.

For Petitioner : Mr.S.Karthikeyan
For Respondent : Mr.C.Raghavan
Govt. Advocate

O R D E R

On the complaint lodged by M/s.Raj Television Network Ltd., the respondent registered a case in Crime No.262 of 2009 and after completing the investigation, have filed a Charge Sheet in C.C.No.1259 of 2012 before the XVIII Metropolitan Magistrate, Saidapet, Chennai under Section 420 and 506[iii] IPC against Augustin Peter [A1] and R.D.Rajasekar [A2]. R.D.Rajasekar [A2] has been shown as absconding accused. The case was pending on the file of the trial Court, for want of service of summons/ warrant on R.D.Rajasekar [A2]. Thereafter, on 11.06.2018, the case against R.D.Rajasekar [A2] was split up as C.C.No.4906 of 2018 and NBW was issued against him. On coming to know of the NBW, R.D.Rajasekar [A2] filed a petition in CMP.No.2625 of 2018 to recall the warrant without surrendering before the Magistrate. The learned Magistrate has dismissed the said petition by impugned order on 09.08.2018. Aggrieved by which, R.D.Rajasekar [A2] is before this Court.

2.Heard Mr.Karthikeyan, learned counsel for the

petitioner and the learned Government Advocate.

3.Mr.Karthikeyan submitted that R.D.Rajasekar [A2] is a famous cameraman in the film industry and he has been shooting films for the last two decades and even after registration of the FIR, he was active in the industry and was not in abscondence. He further contended that his film Kolamavu Kokila has been released recently and therefore, the Police ought not to have characterised him as an absconding accused. He further contended that even when the FIR was registered, there was no attempt by the Police to summon R.D.Rajasekar and had the Police done that, he would have atleast moved the Court for anticipatory bail.

4.Per contra, learned Government Advocate refuted the contentions.

5.This Court gave its anxious consideration to the rival submissions. The petitioner has filed a cyclostyled format petition before the trial Court for recalling the NBW. The petitioner has not even given any valid reasons for dispensing with his presence and for recalling the warrant. Therefore, the trial Court was perfectly justified in dismissing the petition. Under normal circumstances, this Court would loath to interfere, in cases of this nature.

6.However, on a reading of the Charge Sheet, the de facto complainant has alleged that they had given advance of Rs.15,00,000/- to Augustin Peter [film director] and R.D.Rajasekar [A2]-cameraman for a film project and that, they returned only Rs.5,00,000/- and did not return the balance of Rs.10,00,000/-. Even according to the de facto complainant, he had entered into an agreement with the duo on 23.05.2008 and the advance amount was also paid by cheque. The repayment of Rs.5,00,000/- was also made by cheque. Thus, in the opinion of this Court, the entire transaction appears to be civil in nature.

7.Strangely, without even conducting preliminary enquiry about the whereabouts of the petitioner, the Police have declared him as absconder and filed the present Charge Sheet. Therefore, this Court directs the petitioner to surrender before the trial Court and file a detailed application for recall of warrant and on such application being filed, the trial Court is directed to consider the same, bearing in mind the facts and circumstances of the case, in the light of the law laid down in Pillappan @ Ravikumar Vs State rep. by Inspector of Police, West Police Station, Kumbakonam, Thanjavur District reported in 2018[2] MLJ [CRL] 502.

With the above direction, this petition is closed.

Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True copy//

Sub Assistant Registrar

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To

1.XVIII Metropolitan Magistrate,
Saidapet, Chennai.

2.The Inspector of Police,
E-3, Teynampet Police Station,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Karthikeyan, Advocate SR.No.57797

CRL.OP.No.20518 of 2018

GN(31/08/2018)



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