

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.5789 of 2018

Sikkandhar @ Sikkandhar Raja

... Petitioner

Vs

State rep.by its
Inspector of Police
CSCID Coimbatore,
Coimbatore District.
(Crime No.72 of 2007)

... Respondent

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C. to direct the Judicial Magistrate No.IV, Coimbatore to recall the Non Bailable Warrant issued against the petitioner in C.C.No.107 of 2009 dated 19.09.2016 on the file of the learned Judicial Magistrate No.IV, Coimbatore.

For Petitioner : Mr.W.Camyles Gandhi

For Respondent : Mrs.P.Kritika Kamal
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed to direct the Judicial Magistrate No.IV, Coimbatore to recall the Non Bailable Warrant issued against the petitioner in C.C.No.107 of 2009 dated 19.09.2016 on the file of the learned Judicial Magistrate No.IV, Coimbatore.

2.This Court in an earlier occasion had elaborately dealt with the issue as to whether the High Court, exercising its inhereint powers under Section 482 of the Code of Criminal Procedure, is empowered to quash or recall a Non-bailable Warrant when an alternate remedy under Section 70 (2) of the Code of Criminal Procedure empowers cancellation of the warrant by the court that had issued the warrant.

3. After analysing the principles laid down in the

various decisions of the Honourable Supreme Court and our High Court in detail, this Court in the order dated 07.09.2017 in Crl.O.P.No.13276 of 2017 etc., batch, has held as follows:

18.It is also brought to my notice that apart from various other reasons for the long pendency of cases before the trial Courts, the non execution of Non Bailable Warrant is one among the reasons. This fact is reiterated through the last data collected by the NCRB. In most of these pending cases, it is seen that whenever a Non Bailable warrant is kept pending execution, the usual practice among many of the Court is to adjourn the case on the ground that "Non Bailable Warrant is pending".

19.In heinous crimes, where there is deliberate and continuous non appearance of the accused, the trial Court may proclaim him as person absconding under Section 82 of the Code of Criminal Procedure.

20.Thus, under Section 82 of Cr.P.C., there can be no impediment on the part of the trial Court to pronounce him as a proclaimed offender, instead of keeping the matter pending indefinitely for the purpose of having the warrant executed. Hence, the existence of the fourth category of cases cannot be a ground to preclude the High Court to do justice in the first three categories particularly, when they constitute a major portion of the pending cases in the State of Tamil Nadu, in which, Non Bailable Warrants are pending execution.

21.To sum up the findings rendered by me, it is reiterated that the issuance of Bailable Warrant or Non Bailable Warrant should be exercised with extreme caution and in the rarest of cases, bearing in mind that the pendency of Non Bailable Warrant is one of the major factors for the long pendency of cases before the trial Court. The trial Court shall also scrupulously follow the guidelines imposed in Inder Mohan Gowsami's case (supra) as well as the observations made in the present case while issuing Non Bailable Warrants or recalling the Non Bailable Warrants.

4. In the present case though the Non-bailable warrant was issued as early as on 19.09.2016, it has been kept pending

without execution till date. In view of the observations made in the earlier order extracted above, it would be appropriate to re-call the warrant issued by the Trial Court.

5. Hence, this Criminal Original Petition stands allowed. The Non Bailable warrant issued on 19.09.2016 is recalled. Consequently, the accused is directed to appear before the learned Judicial Magistrate No.IV, Coimbatore, in connection with C.C.No.107 of 2009 within one week from the date of receipt of this order and on subsequent hearing dates without fail.

Sd/-

Deputy Registrar

//True Copy//

Sub Assistant Registrar

dna

To

1.The Inspector of Police
CSCID Coimbatore,
Coimbatore District.
(Crime No.72 of 2007)

2.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.W.Camyles Gandhi, Advocate, S.R.No.16909

Cr1.O.P.No.5789 of 2018

RRK(14/03/2018)

सत्यमेव जयते

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