

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.07.2018

Pronounced on : 10.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.24002 of 2011

and

M.P.Nos.1 & 2 of 2011

N.Janardhanan,
S/o.Navaneetham. ... Petitioner/Accused No.2

Vs.

Inspector of Police,
Mayiladuthurai Police Station,
Mayiladuthurai. Respondents/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 10.06.2011 passed in Cr.R.P.No.8 of 2008 on the file of the Principal Sessions Court, Nagapattinam as against the order dated 25.02.2008, 14.03.2008, 20.03.2008 and 24.03.2008 in P.R.C.No.101 of 2002 on the file of the Judicial Magistrate Court No.1, Mayiladuthurai.

For Petitioner : Mr.R.Karunakaran

For Respondent : Ms.V.Saratha Devi
Government Advocate [Crl.Side]

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O R D E R

This Criminal Original Petition has been filed against the order dated 10.06.2011 made in Cr.R.P.No.8 of 2008 passed by the file of the Principal Sessions Judge, Nagapattinam as against the docket orders dated 25.02.2008, 14.03.2008, 20.03.2008 and 24.03.2008 in P.R.C.No.101 of 2002 pending on the file of the Judicial Magistrate Court No.1, Mayiladuthurai.

2.The contention of the petitioner is that the presence of the petitioner and the co-accused namely C.R.Rajeshwaran was dispensed with in P.R.C.No.101 of

2002, which has been cancelled by the issuance of Non-Bailable Warrant against them, which is in contradiction to the order dated 12.09.2003 in Crl.O.P.No.13479 of 2002, against which he had filed a Crl.R.C.No.8 of 2008 before the Principal Sessions Court, Nagapattinam, stay petition filed by the petitioner on 29.04.2008, despite the same, the learned Judicial Magistrate No.1, Nagapattinam had issued Non-Bailable Warrant.

3.The learned counsel for the petitioner further contended that the Judicial Magistrate No.1, Mayiladuthurai wantonly retained the docket entry in P.R.C.No.101 of 2002. Taking advantage of the same, the Sessions Court, Nagapattinam had passed an order against the petitioner in Crl.R.P.No.8 of 2008 and the learned Judicial Magistrate No.1, Mayiladuthurai exceeding the jurisdiction had issued Non-Bailable Warrant against the petitioner. The learned Judicial Magistrate No.1, Mayiladuthurai proceeded against the order of this Court in Crl.O.P.No.30567 of 2003. Contradict to the pendency of quash petition in Crl.O.p.No.9077 of 2005 is filed before this Court, for which the case bundle in P.R.C.No.101 of 2002 has been forwarded. Thus, the petitioner filed a petition in Crl.O.P.No.9077 of 2005 for which the case bundle in P.R.C.No.101 of 2002 have been forwarded. This being the case, for non-prosecution of the counsel the Crl.O.P.No.9077 of 2005 has been dismissed. Thereafter, the restoration petition in S.R.No.99 of 2008 has been filed before this Court. This fact was informed to the learned Judicial Magistrate No.1, Mayiladuthurai on 25.02.2008 and the learned Judicial Magistrate No.1, Mayiladuthurai had stated that on 14.03.2008 the copies to be furnished to the petitioner.

4.The learned counsel for the petitioner further contended that the Criminal Original Petition is to be restored and hence, the learned Judicial Magistrate No.1, Mayiladuthurai has to await the orders of this Court. On 14.03.2008, R.Ethiraj A3, one of the accused in P.R.C.No.101 of 2002 and the copies were furnished to him and the case was posted for committal on 20.03.2008. In the meanwhile, the petitioner had filed a transfer petition in M.P.No.58 of 2008 before the Chief Judicial Magistrate Court, Mayiladuthurai seeking to transfer the P.R.C.No.101 of 2002 from the file of the Judicial Magistrate Court No.1, Mayiladuthurai and the case was adjourned to 25.03.2008. This fact was informed to the learned Judicial Magistrate No.1, Mayiladuthurai, despite the Judicial Magistrate No.1, was informed about the next hearing date in the Chief Judicial Magistrate

Court. On 20.03.2008, the learned Judicial Magistrate No.1, Mayiladuthurai had furnished copies to the counsel for the petitioner and the co-accused namely C.R.Rajasekaran and adjourned the case to 24.03.2008, on which day, the presence of the petitioner was insisted, which is in violation of the order of this Court in CrI.O.P.No.30567 of 2003, wherein it is observed that if the presence of the accused/petitioner is necessary, he may be summoned.

5.The learned counsel for the petitioner further contended that when the entire case records of P.R.C.No.101 of 2002 was before this Court how the case could be committed and further insisting of the petitioner's presence on 24.03.2008, 26.03.2008 and 02.04.2008 is un-warranted, against which he had filed the Miscellaneous Petition before the Chief Judicial Magistrate Court, Mayiladuthurai.

6.In the meanwhile, the committal Court namely the Judicial Magistrate Court No.1, Mayiladuthurai had issued Non-Bailable Warrant against the petitioner, hence, the petitioner had filed the revision before the District and Sessions Court, Nagapattinam in Cr.R.P.No.8 of 2008, to recall the docket order and the Cr.R.P.No.8 of 2008 came to be dismissed by the District and Sessions Court, Nagapattinam by order dated 10.06.2011.

7.On a perusal of this Criminal Original Petition, it is seen that the petitioner for the same prayer had approached the Sessions Court in CrI.R.C.No.8 of 2008 which came to be dismissed by order 10.06.2011, against which this Criminal Original Petition is filed amounts to second revision.

8.The Hon'ble Supreme Court of India in the case of *Rajathi Vs. C.Ganesan* reported in (1999) 6 SCC 326, wherein it has been held that the bar of second revision after dismissal of first one by the Sessions Court -- Inherent powers of High Court cannot be utilised as a substitute for second revision.

9.On the contentions of the petitioner and the respondent and on a perusal of the documents, it is found that no new ground and special circumstances warrants permitting the above Criminal original Petition. In view of the above, this Criminal Original Petition being in the nature of the second revision, which is not permissible in law.

10.Thus, the Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Sessions Judge,
Nagapattinam.
- 2.The Judicial Magistrate No.1,
Mayiladuthurai.
- 3.Inspector of Police,
Mayiladuthurai Police Station,
Mayiladuthurai.
- 4.The Public Prosecutor,
High Court, Madras.

ORDER IN

Cr1.O.P.No.24002 of 2011

ASK(30/08/2018)

सत्यमेव जयते

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