

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.21728 of 2018

and

CRL.M.P.Nos.11885 & 11886 of 2018

Unnamalai

...Petitioner/Accused

Vs.

K.J.Samraj

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Sec.482 of the Code of Criminal Procedure, to direct the Judicial Magistrate No.3, Salem to consider the petition to recall the Non Bailable Warrant pending against the petitioner in S.T.C.No.637 of 2017 without insisting for the personal appearance of the petitioner/accused.

For Petitioner :Mr.G.Baskar

O R D E R

This petition has been filed by the accused to recall the Non- Bailable Warrant, which was issued against the petitioner in S.T.C.No.637 of 2017 on the file of the Judicial Magistrate No.3, Salem without insisting the personal appearance of the petitioner.

2. The learned counsel for the petitioner has submitted that the respondent herein has filed a private complaint under Section 138 of the Negotiable Instruments Act, against the petitioner herein and based on the said complaint, the learned Judicial Magistrate No.3, Salem has taken the case on file in S.T.C.No.637 of 2017 and issued summons by post. He further submitted that the respondent has sent summons through post to the wrong address and the postman has returned the same as not claimed. He further submitted that the petitioner is not actually residing in the said address. He is residing at some other place. He further submitted that, based on the said

endorsement, the learned Judicial Magistrate No.3, Salem has issued Non-Bailable Warrant. He further submitted that the petitioner is suffering from Neuro problem and he undergone surgery in the spinal cord on 06.12.2017. He further submitted that the petitioner is staying at Chennai with his daughter and he is unable to travel to Salem and hence, the learned Judicial Magistrate may be directed to recall the Non-Bailable Warrant without insisting the personal appearance of the petitioner.

3.It is not in dispute that the summons was sent by the Registered post to the petitioner and the same was returned as 'not claimed'. The petitioner has not attributed any motive against the postman for making such false endorsement as not claimed. As per Section 114 of Evidence Act, it has to be presumed that the postman has made a correct endorsement. It appears that since the learned Judicial Magistrate felt that the personal appearance of the petitioner is absolutely necessary, he has issued Non-Bailable Warrant. So, the petitioner has to surrender before the trial Court and file an application to recall the warrant. If any such application is filed, the learned Judicial Magistrate No.3, Salem has to consider the said application on the same day and pass order in accordance with law without adjourning the same.

4.The learned counsel for the petitioner has submitted that since the petitioner is taking treatment at Chennai, two weeks time may be granted for appearance of the petitioner before the trial Court. Considering his submission, the petitioner is directed to surrender before the trial court within two weeks from the date of receipt of a copy of this order.

5. With the aforesaid said observations, this Criminal Original Petition is disposed of. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

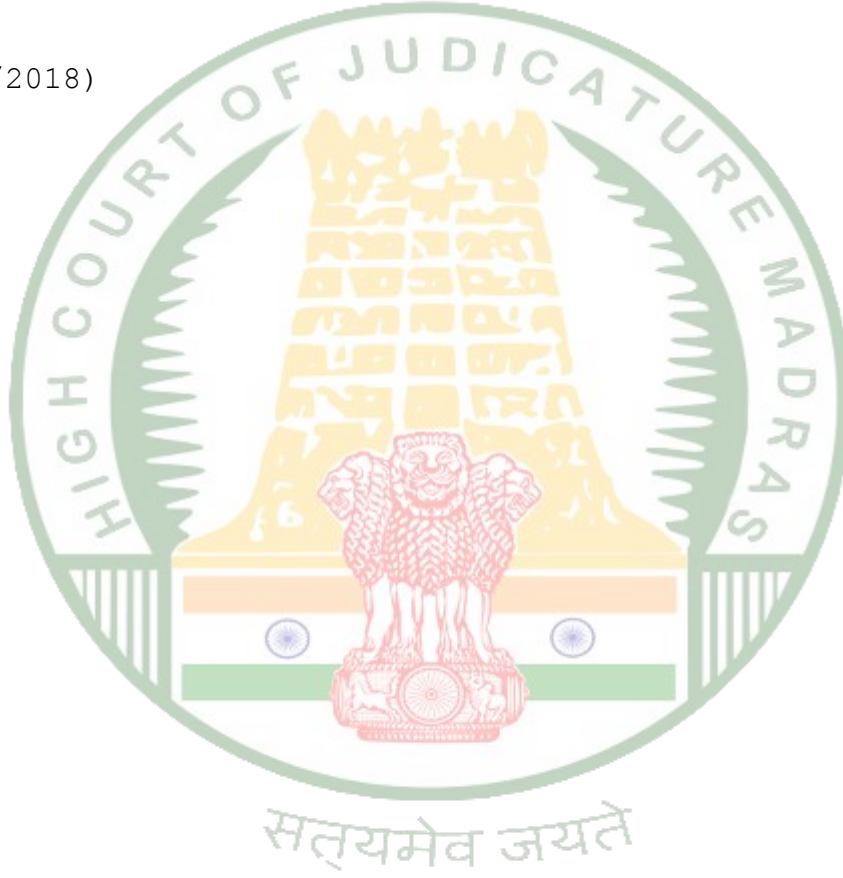
1.The Judicial Magistrate No.3,
Salem.

2.The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.S.Anbalagan, Advocate, S.R.No.62806

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GSP(11/09/2018)



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