

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.16652 of 2018

Sailesh Kumar Jain,
S/o.Sarimal Jain,
Proprietor,
Prosoft IT Solutions,
C1, Stringers Apartments,
Vepery, Chennai-3.
[Next to Spencer World Supermarket]

... Petitioner/Petitioner/Accused

Vs

Galada Finance Limited,
Having its office at Old No.4, New No.7,
Shafee Mohammed Road,
Thousand Lights, Chennai-6.
Rep. by its Manager
G.Ramesh

.. Respondent/Respondent/Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order dated 25.06.2018 passed in unnumbered Cr.M.P. of 2018 in C.C.No.2769 of 2017 on the file of the XX Metropolitan Magistrate, Egmore and to consequently direct that the petition under Section 70[2] of the Code of Criminal Procedure, 1973 be taken on file and disposed off in accordance with law.

For Petitioner : Mr.Govind Chandrasekhar

WEB COPY
O R D E R

The petitioner is an accused in C.C.No.2769 of 2017 before the XX Metropolitan Magistrate, Egmore, Chennai for an offence under Section 138 of Negotiable Instruments Act, 1881. On 04.05.2018, the accused did not appear and his counsel also did not file a petition under Section 317 of Cr.P.C. Therefore, the trial Court issued non bailable warrant against the accused. The counsel for the accused filed an application under Section 70[2] of Cr.P.C. on 25.06.2018, to recall the warrant and the

same has been returned by the learned Magistrate with an endorsement "Accused called absent. Hence returned." Under such circumstances, the accused is before this Court for recalling the warrant.

2. Heard the learned counsel for the petitioner/accused and perused the materials placed on record.

3. In the considered opinion of this Court, a petition to recall the warrant under Section 482 of Cr.P.C. is not maintainable, since the warrant can be recalled by the Magistrate under Section 70[2] of Cr.P.C.

4. Mr. Sharath Chandran, learned counsel appearing for the accused submitted that the accused is a physically challenged person and that he was brought to the Court in a wheel chair and the learned Magistrate has showed great indulgence by coming from the first floor to the ground floor for questioning the accused. He further contended that on 04.05.2018, the father of the counsel on record for the accused had died and therefore, no application under Section 317 of Cr.P.C. was filed. On account of which, the trial Court has issued non bailable warrant against the accused. He further contended that the counsel filed an application to recall the warrant. But the same has been returned by the Magistrate on the ground that the accused was absent. In the petition filed under Section 70[2] of Cr.P.C. before the trial Court, the accused has stated that he is physically challenged and that the father of his counsel has expired, on account of which, a petition under Section 317 of Cr.P.C. was not filed.

5. In the opinion of this Court, the accused has made out reasonable grounds for recalling the warrant. However, this Court directs the accused to appear before the trial Court within one week from the date of receipt of a copy of this order and file an application for recalling the warrant and on such application being filed, the learned Magistrate shall pass orders in accordance with the law laid down by this Court 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.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The XX Metropolitan Magistrate,
Egmore.

+1cc to Mr.Govind Chandrasekhar, Advocate sr.no.41270

CRL.O.P.No.16652 of 2018

vgi(co)
nr 28/06/2018



WEB COPY