

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.16750 of 2018

and CrI.M.P.No.8655 of 2018

1.Sanjeev Narula
2.Arun Jain

... Petitioners

Vs

The State
Rep. by the Inspector of Police,
Central Crime Branch,
Salem City Police.
[Crime No.13/2016]

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to Cr.M.P.No.1613 of 2018 and to set aside the order of Judicial Magistrate-IV, Salem in Cr.M.P.No.1613 of 2018 in C.C.No.13 of 2018 and also recall the NBW issued against the petitioners.

For Petitioners : Mr.B.S.Manjunath
For Respondent : Ms.P.Kritika Kamal,GA [CrI.Side]

O R D E R

This petition has been filed to set aside the order dated 15.04.2018 passed by the learned Judicial Magistrate-IV, Salem in Cr.M.P.No.1613 of 2018 in C.C.No.13 of 2018.

2.Heard the learned counsel for the petitioners; learned Government Advocate [CrI. Side] for the respondent and perused the materials placed on record.

3.On the complaint lodged by Ashok Kumar, the respondent Police registered a case in Crime No.13 of 2015 and after completing the investigation, has filed a charge sheet in C.C.No.13 of 2018 for the offences under Sections 420, 506[1] and 120B IPC against Sanjeev Narula [A1], Madhanlal Narula [A2] and Arunkumar Jain [A3]. It appears that the accused were not

arrested during investigation. However, in the charge sheet, the accused were shown as absconding accused and therefore, the learned Judicial Magistrate-IV, Salem issued non bailable warrant to secure their presence. Pursuant to the execution of NBW, the Police apprehended Madhanlal Narula [A2] on 20.04.2018 and he was produced before the Metropolitan Magistrate, Saket, New Delhi and he was released on transit bail. While so, Sanjeev Narula [A1] and Arunkumar Jain [A3] filed Cr.M.P.No.1613 of 2018 under Section 70[2] Cr.P.C. to recall the warrant without their physical presence. The learned Magistrate refused to exercise her discretion, to recall the warrant in the absence of the accused and dismissed the petition. Aggrieved by which, Sanjeev Narula [A1] and Arunkumar Jain [A3] are before this Court.

4.Learned counsel for the accused submitted that the trial Court has the power to recall the warrant without the presence of the accused, which the trial Court had failed to appreciate. In support of his contention, he relied upon several judgments of this Court and Delhi High Court.

5.Per contra, learned Government Advocate [Crl. Side] refuted the contentions.

6.The normal rule is, for recalling the warrant under Section 70[2] Cr.P.C., the presence of the accused before the trial Court is essential. However, in exceptional cases, the trial court can recall the warrant in the absence of the accused, taking into consideration various factors that are germane.

7.In this case, the accused is facing a prosecution for the offence under Section 420, 406 and 120B IPC. Even after the issuance of a warrant under Section 204 Cr.P.C., the accused could have approached the Sessions Court or the High Court for anticipatory bail under Section 438 Cr.P.C. The accused did not chose to file any application for anticipatory bail and had instead, thought it fit to file an application under Section 70 [2] Cr.P.C. without surrendering before the trial Court. Under such circumstances, this Court does not find any infirmity in the order passed by the trial Court in Cr.M.P.No.1613 of 2018 warranting interference.

8.Learned counsel for the accused submitted that the transaction between the accused and the de facto complainant was purely commercial in nature and there was no criminality in it. He further submitted that the accused were not in abscondence, inasmuch as Madhanlal Narula [A2] and Arunkumar Jain [A3] are accused in four prosecutions namely, C.C.Nos.416 to 419 of 2018 that have been launched by the de facto complainant/Ashok Kumar under Section 138 of Negotiable Instruments Act, 1881, in which,

they have appeared before the Judicial Magistrate-II, Salem. He further submitted that the said prosecutions have been transferred from the file of Judicial Magistrate Court No.II, Salem to the file of Special Magistrate for Land Grabbing Cases, Salem.

9. There appears to be sufficient force in the submission of the learned counsel for the accused. In Pankaj Jain Vs Union of India and Another reported in 2018 SCC Online SC 160, the Supreme Court has laid down the guidelines for exercise of powers under Section 88 Cr.P.C. It is always open to the petitioners to either obtain regular anticipatory bail or surrender before the trial Court and file an application to recall the warrant, in which case, it is open to the trial Court to pass orders under Section 88 Cr.P.C. following the judgment stated supra.

With the above direction, this petition is closed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate-IV,
Salem.

2.The Chief Judicial Magistrate,Salem.

3.The Inspector of Police,
Central Crime Branch,
Salem City Police

4.The Special Magistrate for Land Grabbing,Salem.

5.The Public Prosecutor,High Court, Madras.

+3cc to Mr.B.S.Manjunath, Advocate, S.R.No.41798

CRL.O.P.No.16750 of 2018

SSV (CO)
BM 02/07/2018