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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.25567 of 2018
and CRL.M.P.Nos.14604 & 14605 of 2018

1.Priyanga @ Logambal
2.S.Suresh

.. Petitioners

Vs

State rep. By
The Sub-Inspector of Police,
D1, Ramanathapuram Police Station (Law & Order)
Coimbatore City.

...Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records and to set aside the Docket Order dated 09.04.2018 made in C.C.No.118 of 2018 on the file of the Court of Judicial Magistrate No.VI, Coimbatore.

For Petitioners : Mr.C.E.Pratap

For Respondent : Ms.M.Prabhavathi,
Addl. Public Prosecutor.

O R D E R

In a quarrel between two neighbours, a case in Crime No.782 of 2017 was registered on 13.07.2017 by the Ramanathapuram Police Station for the offences under Sections 294(b), 323 and 506 (i) IPC which was then altered to 294(b), 355 and 506 (i) IPC. After completing the investigation, the respondent police filed a final report before the Judicial Magistrate No.VI, Coimbatore on 21.12.2017 and cognizance was taken on file as C.C.No.118 of 2018 on 09.04.2018 for the offences under Sections 294(b), 355 and 506 (i) IPC by the learned Judicial Magistrate No.VI. After taking cognizance, the learned Judicial Magistrate No.VI has directly issued a Non-Bailable Warrant to secure the accused, challenging which the accused are before this Court.

2.Heard Mr.C.E.Pratap, learned counsel for the petitioners and the learned Additional Public Prosecutor for the respondent.

3.On a perusal of the impugned order, it is seen that the



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same reads as follows:

"C.C.118/18 Dated 09.04.2018
TOF u/s 294 (b), 355, 506 (I) IPC
Posted to 23.05.2018
Issue NBW to A1, A2
Prepare Copies.
/sd/
JM
9/4/18"

4.Mr.C.E.Pratap, learned counsel for the petitioners placed strong reliance on the Judgment of this Court in M/s.Jeevan Emu Care Indian (P) Ltd., Vs. The State of Tamil Nadu 2015-2-L.W. (Crl) 110, wherein in paragraphs 10 and 11, it is stated as follows:

"10.A perusal of the above judgments would make it ipso facto clear that since issuance of non bailable warrant involves interference into the personal liberty, which is the most precious right of an individual, the Courts have to be extremely cautious before issuing non bailable warrant. In this regard, I would state that the power to issue a warrant, either bailable or non bailable, is different from the necessity to exercise the said power. The Hon'ble Supreme Court in the above judgment has cautioned that before issuing a non bailable warrant, the Court should be extremely cautious to find whether there is absolute necessity to issue non bailable warrant without using the other tools of summons and bailable warrant to secure the attendance of such a person.

11.But, in the instant case, the learned Judge, without adhering to the above guidelines issued by the Hon'ble Supreme Court, in a casual manner, without assigning any reason, simply because he has got a power to issue non bailable warrant, has issued the non bailable warrant. This practice deserves to be deprecated. Therefore, consider the above order passed by the Magistrate issuing Non-Bailable Warrant straight away deserves to be set aside."

Therefore, he contended that the order passed by the learned Magistrate issuing Non-Bailable Warrant straight away deserves to be set aside.

5.The learned Additional Public Prosecutor conceded the legal position.



6.This court gave its anxious consideration to the rival submissions.

7.On a reading of the charge sheet in C.C.No.118 of 2018, it is alleged that on 11.07.2018, there was a quarrel between the de facto complainant and the accused, in which A1 is said to have slapped the de facto complainant on his head with a chappal and intimidated the de facto complainant. Initially, the case was registered under Section 323 IPC and later, the case has been altered to Section 325 IPC, since, there was no visible injury suffered by the de facto complainant. The dispute essentially appears to be between the neighbours and A1 admittedly is lady and A2 is her father.

8.Thus, the learned counsel for the accused submitted that the accused were not arrested during investigation by the police and they also did not even apply for Anticipatory Bail, because they were not even aware of registration of the case.

9.In the opinion of this Court, in a case of this nature, the Magistrate ought not to have issued a Non-Bailable Warrant at the first instance. He should have issued summons to secure the presence of the accused and if they had failed to respond to the summons, then there would have been justification for the Magistrate to issue a warrant after recording the reasons.

10.In such view of the matter, that part of the order dated 09.04.2018 in C.C.No.118 of 2018 issuing Non-Bailable Warrant to A1 and A2 is set aside. However the petitioners are directed to appear before the Trial Court within a period of two weeks from the date of receipt of a copy of this order and on such appearance, the petitioners shall execute a bond for Rs.10,000/- with two common sureties under Section 88 Cr.P.C., and participate in the proceedings in C.C.No.118 of 2018.

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

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kkn/gsa



To

1.The Sub-Inspector of Police,
Dl, Ramanathapuram Police Station (Law & Order)
Coimbatore City.

2.The Judicial Magistrate No.VI,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.C.E.Pratap, Advocate, S.R.No.75817

CRL.O.P.No.25567 of 2018
and CRL.M.P.Nos.14604 & 14605 of 2018

RK(CO)
GSP(26/11/2018)