



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Thursday, the First day of February Two Thousand and Eighteen

WEB COPY

CORAM :

The Hon`ble Mr.Justice S.S.SUNDAR

CRL MP(MD) No.532 of 2018
IN
CRL OP(MD) No.16071 of 2017

P.G.PRASANTH @ PRADEESH

... PETITIONER/ACCUSED No.3

Vs

THE STATE OF TAMIL NADU,
REP. BY THE INSPECTOR OF POLICE,
NITHIRAVILAI POLICE STATION,
KANYAKUMARI DISTRICT.

... RESPONDENT/COMPLAINANT

Prayer in CRL MP(MD) No.532 of 2018:

Criminal Miscellaneous Petition is filed under Section 482 of Criminal Procedure Code praying this Hon'ble Court to modify the order passed in Crl.O.P.(MD).No. 16071/2017 dated 23.11.2017.

Prayer in CRL OP(MD)No.16071/2017 :

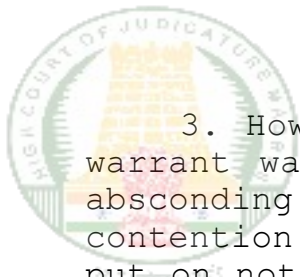
Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to direct the Judicial Magistrate No.II, Kuzhithurai to consider the recall Warrant petition under Section 70 (2) of Cr.P.C., to recall the Non-Bailable Warrant issued against the Petitioner in P.R.C.No.14 of 2016 dated 13.04.2016, on the date of the surrender.

Order : This petition coming on for hearing on this day, upon perusing the petition and affidavit filed and arguments of Mr.C.K.M.APPAJI, Advocate for the petitioner, none appear of the Respondent, this court made the following order:-

This Criminal Miscellaneous Petition has been filed praying to modify the order passed in Crl.O.P(MD)No.16071 of 2017 dated 23.11.2017.

2. This Court, by an order dated 23.11.2017, in Crl.O.P.(MD) No.16071 of 2017, in the fourth paragraph, has observed as follows:

"...this Court is convinced that the warrant was issued, when the petitioner could not appear on that day due to unavoidable circumstances and that he was always appearing before the Court on all earlier occasions."



3. However, it is stated in the petition that the non-bailable warrant was issued as against the petitioner on 13.04.2016, since absconding charge sheet was filed against him. It is the specific contention of the learned Counsel for the petitioner that he was not put on notice. Since the facts stated in the order does not reflect the correct position, this Criminal Miscellaneous Petition is ordered. The order dated 23.11.2017 made in CrI.O.P(MD)No.16071 of 2017 is modified and the same shall be read as under:-

"1. This Criminal Original Petition is filed for issuing a direction to the learned Judicial Magistrate No.II, Kuzhithurai, to accept the surrender of the petitioner and to consider his warrant recall petition under Section 70(2) of Cr.P.C., on the same day on merits in P.R.C.No.14 of 2016 on the file of the learned Judicial Magistrate No.II, Kuzhithurai.

2.Heard the learned Counsel appearing for both sides.

3.It is stated that the respondents herein have filed a charge sheet as against the petitioner and three others in P.R.C.No.14 of 2016 on the file of the learned Judicial Magistrate No.II, Kuzhithurai, for the offences punishable under Sections 341, 323, 324 and 307 r/w 34 of IPC.

4.It is further stated that the petitioner was not involved and he has nothing to do with the alleged occurrence. It is the specific case of the petitioner that at the relevant point of time, he was working at Coimbatore. It is also stated that originally, the first information report was registered in Cr.No.136 of 2012 as against the petitioner's elder brother, by name, Pradeesh, as the third accused. Since he died on 29.01.2007 itself, the respondent, after, realizing the blatant error, has included the petitioner's name in the charge sheet by artificially employing his surname P.G.Prasanth @ Pradeesh and has filed the absconding charge sheet, without even issuing notice or summons, following which, a non-bailable warrant was also issued against the petitioner, on 13.04.2016. It is in these circumstances, this Court is inclined to entertain this petition.

5.Considering the material facts and the circumstances of this case, this Court is convinced that Non-Bailable Warrant has been issued even without considering the material facts. Hence, this petition is allowed and the learned Judicial Magistrate No.II, Kuzhithurai, is directed to accept the surrender of the petitioner and consider the recall warrant petition filed under Section 70(2) of Cr.P.C., on the same day on merits in P.R.C.No.14 of 2016."

Sd/-
Assistant Registrar (CO)

/True Copy/



TO

1 THE JUDICIAL MAGISTRATE NO.II,
KUZHITHURAI, KANYAKUMARI DISTRICT.

2 THE CHIEF JUDICIAL MAGISTRATE,
NAGERCOIL AT KANYAKUMARI.

3 THE INSPECTOR OF POLICE,
NITHIRAVILAI POLICE STATION,
KANYAKUMARI DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+ 1 CC TO Mr.C.K.M.APPAJI, ADVOCATE IN SR No. 45636

DATED : 01.02.2018

ORDER

CRL MP(MD) No.532 of 2018 IN
CRL OP(MD) No.16071 of 2017

TE/JC/SAR-2 : 13/02/2018 : 3P/6C