



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2018

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P. (MD) No.2538 of 2018

WEB COPY

Ramesh @ Ramesh Babu

... Petitioner/3rd Accused

-Vs-

State represented by,
The Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District.
(Crime No.120 of 2005)

... Respondent/Complainant

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to direct the learned Judicial Magistrate, Padmanabhapuram, Kanyakumari District, to consider the petition filed under Section 70(2) of Cr.P.C., to recall the N.B.W., without insisting the presence of the petitioner in connection with the case in P.R.C.No.41 of 2016.

For Petitioner : Mr.S.Selvakumar

For Respondent : Mr.Prabhu Ramachandran,
Government Advocate (Criminal Side)

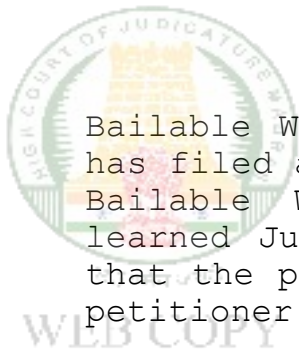
ORDER

This Criminal Original petition has been filed by the third accused to direct the learned Judicial Magistrate, Padmanabhapuram, Kanyakumari District, to consider and to dispose of the petition to be filed by the petitioner to recall the Non Bailable Warrant, without insisting the presence of the petitioner in connection with the case in P.R.C.No.41 of 2016.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Criminal side) appearing for the respondent.

3. Brief facts are as follows:-

The respondent police has filed a charge sheet in Crime No.120 of 2005 for the offences under Sections 395 and 397 r/w 34 of I.P.C., against the petitioner herein and against six accused persons and the petitioner herein is the third accused and based on the said charge sheet, the learned Judicial Magistrate, Padmanabhapuram Kanyakumari District, has taken the case in P.R.C.No.41 of 2016 and issued summons to the petitioner. After receipt of the summons, the petitioner did not appear before the Court and hence, the learned Judicial Magistrate has issued Non



Bailable Warrant on 08.02.2017. Thereafter, the petitioner herein has filed a petition under Section 70(2), Cr.P.C., to recall the Non Bailable Warrant on 21.11.2017, without surrendering him. The learned Judicial Magistrate has returned the said petition stating that the petitioner should appear. Challenging the said order, the petitioner has filed the present petition.

4. The learned counsel for the petitioner has submitted that after receipt of the summons, the petitioner has gone to Kerala to eke out his livelihood and hence, he did not appear before the Court of Judicial Magistrate and consequently, the learned Judicial Magistrate has issued Non Bailable Warrant. He has further submitted that the petitioner apprehends that if he appears before the learned Judicial Magistrate, then he may be remanded and hence, the learned Judicial Magistrate may be directed to consider the recall petition without insisting the appearance of the petitioner. In support of the said contention, he relied on a decision of this Court in S.Sundar Vs. The Inspector of Police, Vigilance and Anti-Corruption, Chennai(Crl.O.P.No.4514 of 2016).

5. In S.Sundar Vs. Vigilance and Anti-Corruption, Chennai (Supra), the petitioner was the public servant and he was facing trial for the charges under the Prevention of Corruption Act and he regularly appeared before the Court and he was not appeared on one hearing and hence Non-Bailable Warrant has been issued by the learned Special Judge/Chief Judicial Magistrate, Chengalpattu. Considering the aforesaid circumstances, this Court has directed the trial Court to entertain the warrant recall petition without insisting the presence of the accused and also directed the trial Court to allow the recall petition.

6. At this juncture, it would be relevant to refer the decision in Madan Mohan Vs. State of Rajasthan and others[Criminal Appeal No.2178 of 2017 arising out of S.L.P.(Crl.)No.8030 of 2017], wherein, the Hon'ble Supreme Court in paragraph Nos.16 and 17 has observed as follows:-

" 16. In our considered opinion, the High Court had no jurisdiction to direct the Sessions Judge to "allow" the application for grant of bail. Indeed, once such direction had been issued by the High Court then what was left for the Sessions Judge to decide except to follow the directions of the High Court and grant bail to respondent Nos.2 and 3. In other words, in compliance to the mandatory directions issued by the High Court, the Sessions Judge had no jurisdiction to reject the bail application but to allow it.

17. No superior Court in hierarchical jurisdiction can issue such direction/mandamus to any subordinate Court commanding them to pass a particular order on any application filed by any



party. The judicial independence of every Court in passing the orders in cases is well settled. It cannot be interfered with by any Court including superior Court."

7. In view of the aforesaid decision, the trial Court should be allowed to exercise its discretion. This Court cannot direct the trial Court to pass any particular order on any application filed by any party.

8. In this case, the charge against the petitioner is under Sections 395 and 397 r/w 34 of I.P.C. Further, in this case, after receipt of the summons, the petitioner did not appear before the Court and therefore, Non-Bailable Warrant has been issued. The petitioner cannot seek indulgence of this Court to dispense with his personal appearance before the trial Court. Therefore, the petitioner is directed to surrender before the learned Judicial Magistrate, Padmanabhapuram, Kanyakumari District, within a period of two weeks from the date of receipt of a copy of this order and to file a petition under Section 70(2), Cr.P.C., to recall the Non Bailable Warrant. On such surrender and filing of the application under Section 70(2), Cr.P.C., the learned Judicial Magistrate, Padmanabhapuram, has to consider and pass orders on merits and in accordance with law on the same day either to allow the application or to dismiss the application, without adjourning the same.

9. With the aforesaid observation, this petition is disposed of.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

- 1.The Judicial Magistrate,
Padmanabhapuram,
Kanyakumari District.
- 2.The Inspector of Police,
Kulasekaram Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.J.Jeya Aron Raja, Advocate SR.No. 52571

+1cc to M/S.S.Selvakumar, Advocate SR.No. 52225

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JM/SV MMS/SAR 1/23.03.2018/3P/6C