



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.04.2018

CORAM
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

Cr1.O.P.(MD) No.5001 of 2018

S.Seenivasan

... Petitioner

-Vs-

State represented by,
The Sub-Inspector of Police,
Thiruthangal Police Station,
Virudhunagar District.

(In Crime No.205 of 2001)

...Respondent/Complainant

Prayer: Petition filed under Section 482 of Code of Criminal Procedure to direct the learned Judicial Magistrate No.II, Sivakasi, to consider the recall petition to be filed by the petitioner in C.C.No.275 of 2007 on the file of the Judicial Magistrate No.II, Sivakasi and accept the same on the same day.

For Petitioner : Mr.Anbarasu
for Mr.K.Mathan

For Respondent : Mr.A.Robinson
Government Advocate (Cr1. Side)

O R D E R

This petition has been filed to direct the learned Judicial Magistrate No.II, Sivakasi, to consider the recall petition filed by the petitioner in C.C.No.275 of 2007 on the file of the learned Judicial Magistrate No.II, Sivakasi and accept the same on the same day.

2. It is submitted by the learned counsel for the petitioner that due to the absence of the petitioner on 29.11.2016, for hearing of the case in C.C.No.275 of 2007, non bailable warrant was issued against the petitioner on the same day by the learned Judicial Magistrate No.II, Sivakasi. Hence, he filed this petition seeks to recall the non bailable warrant issued against him.

3. The learned Additional Public Prosecutor, on instructions, would submit that due to absence of the petitioner for one hearing, non bailable warrant was issued against the petitioner and the petitioner shall approach the Court for recalling the warrant instead of filing this petition before this Court. To support his contention, he relied on the judgment of the Hon'ble Supreme Court reported in 2018(1)MLJ(Cr1)SC436 in the case of *Madan Mohan vs. State of Rajasthan and Others*, wherein in paragraph No.16, it has been held 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."

4. In the light of the above decision of the Hon'ble Supreme Court and also considering the fact that non bailable warrant was issued against the petitioner for his absence, there shall be a direction, directing the petitioner to surrender before the learned Judicial Magistrate No.II, Sivakasi on 10.04.2018 and to file a petition for recalling the warrant and on such application, the learned Judicial Magistrate No.II, Sivakasi, is directed to consider the same on the same day and pass orders on merits and in accordance with law.

5. Accordingly, this Criminal Original Petition is disposed of.

Sd/
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II, Sivakasi.

2.The Sub-Inspector of Police,
Thiruthangal Police Station,
Virudhunagar District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.MATHAN, Advocate, SR.No.59866

CrI.O.P.(MD)No.5001 of 2018
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