



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.04.2018
CORAM

THE HONOURABLE MRS.JUSTICE R.THARANI

Crl.R.C.(MD).No.208 of 2018

Pillappan

...Petitioner/Accused No.1

Vs.

State represented by
The Inspector of Police,
Thiruvidaimaruthur Police Station,
Thanjavur District.
(Crime No.323 of 2006)

... Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Section 397 r/w.401 Cr.P.C, to call for the records of the docket order passed by the learned Additional District Sessions Judge (Fast Track Court), Kumbakonam, in S.C.No.11 of 2013, dated 13.03.2018, and set-aside same.

For Petitioner : Mr.M.Karunanithi

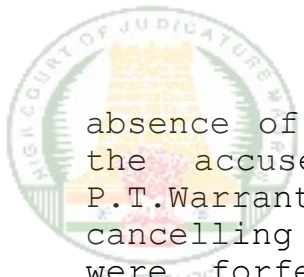
For Respondent : Mr.K.Sumbulinga Bharathi
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Petition filed against the order dated 13.03.2018, cancelling the Bail, forfeiture of bond executed by the petitioner and sureties and remanding the petitioner to custody by the learned Additional District Sessions Judge (Fast Track Court), Kumbakonam.

2.The case against the petitioner is that on 29.11.2006, he indulged in an offence punishable under Sections 294(b), 506(ii) of IPC and 3(1) of Tamil Nadu Public Property (Prevention and Damages of Loss) Act.

3.It is stated that the occurrence took place on 29.11.2006. The case was taken on file in the year 2013. While, NBW was pending against the accused, the petitioner was arrested in Crime No.131 of 2006, under Sections 341, 294(b), 323 and he was remanded before the trial court on P.T.,warrant on 04.08.2017, subsequently, he was released on bail on 16.08.2017 and again he was produced by way of the P.T., warrant on 13.03.2018. On 20.02.2018, due to the absence of this petitioner, witnesses LWs-2 to LW-4 who were present before the court, could not be examined. Again, on 22.02.2018 due to the



absence of the petitioner and his counsel, NBW was issued against the accused. Further, on the production of the accused on P.T.Warrant, the learned Judge remanded the accused, after cancelling the bail bond executed by the accused and the sureties were forfeited.

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4.On the side of the petitioner, it is stated that the Magistrate has no power to cancel the bail. The counsel relied upon a Judgement reported in 1988 CRI.L.J608 in the case of Madhab Chandra Jena and another Vs. State of Orissa.

5.On the side of the respondent, it is stated that this provision is applicable only for bailable offence and not for non bailable offence.

6.On the side of the petitioner, the counsel further argued that remanding a person, when he was produced on P.T.warrant is not permissible under law. He relied upon the decision of this court reported in Appu alias Santhakumar and others Vs. State represented by the Inspector of Police, Palavanthangal Police Station, Chennai and others, in (2004) M.L.J.(CrI.) 440 , where in this Court has observed as follows :

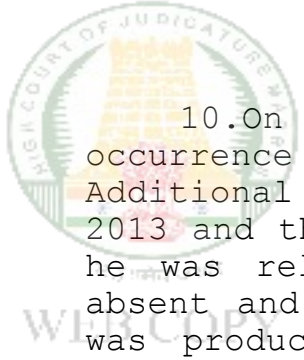
"If the Court passes an order forfeiting the bonds executed by the sureties as well as by the accused, it can seek for fresh sureties. Unless and until the bail is cancelled by the same Court or by a superior Court as per Sec.437(5) or 439(2), CrI.P.C or the bail bonds were cancelled for valid reasons, a person already granted bail but produced under a P.T.Warrant (under Sec.267,CrI.P.C.) cannot be "remanded" by the Court before which he was so produced. "

In this case bail bond and bail order were cancelled and this citation is not applicable to the present case.

7.On the side of the petitioner, it is further stated that notice was not given to the petitioner before cancelling the bail order. In this regard, he cited an order of this Court in CrI.OP(MD) No.1439 of 2010, dated 23.01.2010.

8.On the side of the respondent, it is stated that in paragraph no.4 of the above judgement, this Court has clearly considered that under Section 437(5) of Cr.P.C, the learned Magistrate has got, power to cancel the bail and in paragraph no.5 of the judgment , this Court has considered that forfeiture of the bond as indicated in Section 446 of the Criminal Procedure Code is by the act of the accused, who has committed breach of the conditions imposed.

9.On the side of the petitioner, it is stated that the learned magistrate who has not possessed inherent powers cannot re-call any order passed by him.



10. On perusal of the records, it is seen that the date of occurrence was on 29.11.2006. The case was taken on file by the Additional District & Sessions Judge, Kumbakonam as S.C.No.11 of 2013 and the petitioner was produced on P.T., warrant. Subsequently, he was released on bail. Again, on 20.02.2018, the accused was absent and on 22.02.2018, NBW was issued against him. The accused was produced on P.T., warrant on 13.03.2018, on that date his advocate did not appear and no petition for cancellation of NBW was filed.

11. The bail order is passed with certain conditions to be fulfilled by the accused. Non compliance of the conditions can make the accused disqualified for bail. The court need not issue notice before the cancellation of bail, when the accused was absent and not complying the conditions imposed by the court. When he was produced on P.T. warrant, no petition was filed to cancel the NBW and to recall the NBW. Even when he was produced for the second time, his counsel was absent. The action of the trial judge is based only because the conditions was not complied with by the accused. The citations referred by the petitioner are not applicable to the present facts of the case.

12. In the facts and circumstances of the case, there is no merit in this case. There are sufficient grounds to confirm the order of the learned trial judge. Hence, this Criminal Revision Petition is dismissed by confirming the order of the learned trial judge passed in S.C.No.11 of 2013, dated.13.03.2018.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District Sessions Judge,
(Fast Track Court), Kumbakonam.
2. The Inspector of Police,
Thiruvidaimaruthur Police Station,
Thanjavur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.M.Karunanithi, Advocate, SR.No. 61074

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