



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2018

CORAM:

THE HON'BLE MR.JUSTICE **D.KRISHNAKUMAR**

Cr1.O.P.(MD)No.7179 of 2018

K.Sudarsanam

... Petitioner/Accused

-vs-

1. Tmt.Vijaya

2. The Inspector of Police,
Melur Police Station - B1,
Melur,
Madurai District.

... Respondents/Complainants

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, praying for a direction to the Judicial Magistrate Court, Melur, Madurai District to recall the Non Bailable Warrant issued against the petitioner in S.T.C.No.11766 of 2013, dated 23.03.2018, by considering the petitioner surrender and recall the warrant petition on the same day.

For Petitioner : Mr.R.Murugappan

For R2 : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

O R D E R

This petition has been filed to recall the Non Bailable Warrant issued by the Judicial Magistrate Court, Melur, Madurai District on 23.03.2018 in S.T.C.No.11766 of 2013.

2. It is submitted by the learned counsel for the petitioner that the petitioner is the accused in S.T.C.No.11766 of 2013 and it is pending before the Judicial Magistrate Court, Melur, Madurai District, for hearing. Due to ill health, on 23.03.2018, he did not appear before the Judicial Magistrate Court, Melur, Madurai District. Hence, Non-Bailable Warrant was issued against him and his non-appearance is neither wilful nor wanton. Therefore, this petition has been filed 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. In support of 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 Judicial Magistrate Court, Melur, Madurai District within a period of two weeks from the date of receipt of a copy of this order and file a petition for recalling the warrant and on such application being filed, the learned Judicial Magistrate, Melur, Madurai District, is directed to consider the same and pass orders on the same day, on merits and in accordance with law.

5. This Criminal Original Petition is disposed of accordingly.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Melur, Madurai District.

2. The Chief Judicial Magistrate,
Madurai

3. The Inspector of Police,
<https://hcservices.courts.gov.in/hcservices/>
Melur Police Station - B1,
Melur, Madurai District.



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

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PS/JC/SAR 3/30.05.2018/3P/5C