



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.11.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Cr1.O.P. (MD) .No. 20875 of 2018

Mujipoor Rahuman .. Petitioner
Vs.
Jaishankar .. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to recall the non bailable warrant issued by the Fast Track Court, (Judicial Magistrate Level), Pattukottai, in S.T.C.No.139 of 2017 dated 29.10.2018.

For Petitioner : Mr. G.Karuppasamy Pandiyan

O R D E R

This petition has been filed to recall the Non Bailable Warrant issued by the Fast Track Court, (Judicial Magistrate Level), Pattukottai, in S.T.C.No.139 of 2017, dated 29.10.2018.

2.The learned counsel for the petitioner would submit that the petitioner is an accused in S.T.C. No.139 of 2017, pending on the file of the Fast Track Court, (Judicial Magistrate Level), Pattukottai, in respect of two cheques for a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs) each respectively. He would further submit that on 20.09.2018, the petitioner was not able to attend the Court due to illness and therefore, he filed a petition under Section 317 of Cr.P.C., to condone his absence. However, the learned Judge issued a bailable warrant by neither allowing the petition nor dismissing the petition, but, keeping it pending. He would further submit that the trial in this case has already been commenced and the petitioner is ready to get along with the trial on merits, whereas the learned Judge had asked the petitioner to settle the issue by paying two cheques amount to the respondent and expressed his inclination to convict the petitioner. Hence, the petitioner having apprehension and shocked over the view expressed by the trial Judge, approached the learned Principal District and Sessions Judge, Thanjavur and filed a petition under Section 408 of Cr.P.C., seeking to transfer the case to some other competent authority, other than the present Court. He would submit that the learned Principal District Judge, Thanjavur, has granted an order of interim stay, dated 26.10.2018. He would submit that after knowing about the interim stay granted by the learned Principal District Judge, the Judicial Magistrate, (Fast Track Court), Pattukottai, purposely and



wantonly had issued Non-Bailable Warrant on 29.10.2018 by converting the earlier Bailable Warrant and sent the same for execution to the Deputy Superintendent of Police, Muthupettai, the Inspector of Police, Muthupettai and also to the Inspector of Police, Pattukkottai town, simultaneously. The learned counsel would submit that automatic conversion of Bailable Warrant into Non-Bailable Warrant without any rhyme or reason is unknown to criminal law and would expose the prejudiced mind of the learned Judge. He would also rely on the Judgment of this Court reported in **(2018) 1 MWN CrI 412 [Ramalingam Vs. S.Subramanian]**, wherein, it has been held that though the remedy is available under Section 70(2) of Cr.P.C. to recall the warrant it would not be a bar for the High Court to invoke its inherent power under Section 482 of Cr.P.C. to recall the warrant.

3.Taking into consideration the submission made by the learned counsel for the petitioner, it is clear that the conduct of the learned Judge converting the Bailable Warrant into a Non-Bailable Warrant, despite the information given by the counsel about the interim stay granted by the learned Principal District and Sessions Judge, Thanjavur, exposes bias. Further it is also submitted by the learned counsel for the petitioner that the Warrant has been sent to three officers simultaneously, for execution.

4.In view of the above, the learned Judicial Magistrate (Fast Track Court), Pattukottai, is directed to recall the Non-Bailable Warrant dated 29.10.2018, in S.T.C.No.139 of 2017, pending on his file.

5.With these observations, this Criminal Original Petition stands closed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

Sub Assistant Registrar(CS-IV)

To

1.The Judicial Magistrate,
(Fast Track Court),
Pattukottai.

2.The Principal District and Sessions Judge,
Thanjavur.

3.The Deputy Superintendent of Police,
Muthupettai, Thanjavur District.



4.The Inspector of Police,
Muthupettai Police Station,
Muthupettai, Tanjavur District.

5.The Inspector of Police,
Pattukkottai town Police Station,
Pattukkottai.

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

+1 CC To MR.G.KARUPPASAMY PANDIAN, Advocate SR. NO. 96595

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