



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.09.2018
CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)Nos.16925 and 17041 of 2018

and

Crl.M.P(MD) No.7540 of 2018

P.Raja Samuel

... Petitioner/Sole Accused in both
Crl.O.P's

Vs.

Esakki

....Respondent/Complainant in both
Crl.O.P's

Prayer in Crl.O.P(MD) No.16925 of 2018: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the orders passed by the learned District Munsif cum Judicial Magistrate, Cheranmahadevi dated 14.09.2018 in C.A.No.374 of 2018 in STC No.2255 of 2011 and set aside the same.

Prayer in Crl.O.P(MD) No.17041 of 2018: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the orders passed by the learned District Munsif cum Judicial Magistrate, Cheranmahadevi dated 07.09.2018 in STC No.2255 of 2011 in so far as the issuance of NBW and aside the same.

For Petitioner : Mr.N.Dilip Kumar
in both Crl.O.P's

COMMON ORDER

These two petitions have been filed by the petitioner who has been arrayed as accused in 138NI Act proceedings in STC No.2255 of 2011 which is pending before the District Munsif Cum Judicial Magistrate, Cheranmahadevi.

2. It is seen from records that the petitioner had filed Crl.RC (MD)637 of 2016 before this Court challenging the order passed in a miscellaneous petition by the trial court.

3. This Court during the pendency of the revision petition had stayed proceedings in STC No. 2255 of 2011 and had also granted an order dispensing with the appearance for the petitioner before the court below. It seems that the petitioner had also filed a petition to quash the proceedings in STC No.2255 of 2011. This petition came up for final hearing before this Court and this court by an order dated 16.03.2018 dismissed the criminal original petition to quash the proceedings in STC No. 2255 of 2011 and granted liberty to the petitioner to raise all the grounds before the court below. This Court also directed the court below to complete the proceedings within the period of four months.



4. Thereafter the matter was taken up for final hearing before the court below. The court below by an order dated 07.09.2018 pronounced judgment in STC No.2255 of 2011 by convicting the petitioner and imposed sentence of one year rigorous imprisonment and Rs.2,00,000/- as compensation. While passing this judgment the trial court has also issued Non Bailable Warrant against the petitioner.

5. Aggrieved by the same, the petitioner has filed two Criminal Original Petitions. One to recall the Non Bailable Warrant and another for the direction to the Court below to issue certified copy of judgment passed in STC No. 2255 of 2011.

6. The learned counsel for the petitioner would submit that the court ought not to have issued Non Bailable Warrant since the petitioner had the advantage of the order of this Court wherein the personal appearance was dispensed with pending disposal of the Criminal revision Petition.

7. This Court is not able to accept the said submission since by virtue of the subsequent order passed by this court in CrI.O.P(M) D No. 20321 of 2013, dismissing the petition to quash the proceedings in STC No.2255 of 2011, the earlier interim order passed in the revision will automatically stand cancelled.

8. The learned counsel for the petitioner also raised a ground that the petitioner is entitled for certified copy of judgment passed by the court below and the court below refused to give certified copy on the ground that Non Bailable Warrant is pending. In order to substantiate his arguments, the learned counsel also brought to the notice of this Court the judgement of this Court in M.Senthil Kumar -vs- S.Periyasamy reported in [2016(1) T.N.L.R.407 (MAD) (MB)] Wherein this Court has held that even for seeking for suspension of sentence before the higher forums, the accused persons need not surrender as a condition precedent for the purpose of moving a bail petition pending revision and seek for suspension of sentence. Therefore the learned counsel would submit that the court below ought not to have refused to give certified copy of the judgement on the ground that the petitioner has not surrendered before the court below pursuant to the judgment passed by the court below.

9. This court is in agreement with the said submission made by the learned counsel for the petitioner.

10. In the facts and circumstance of the case, in order to strike the balance and in order to safeguard the right of the petitioner, there shall be a direction to the petitioner to deposit a sum of Rs.1,00,000/- (Rupees one lakh) to the credit in STC No.2255 of 2011, on the file of the District Munsif cum Judicial Magistrate, Cheranmahadevi within a period of one week from the date of receipt of a copy of this order. On such deposit the petitioner shall represent the copy application and the court below shall give certified copy of judgment in STC No.2255 of 2011 immediately. The



Court below is also further directed to recall the Non Bailable Warrant issued against the petitioner . The petitioner on receipt of the certified copy of the judgment in STC No.2255 of 2011 shall thereafter immediately file an appeal before the appropriate court and seek for suspension of sentence by filing an independent petition to that effect. The appellate court at the time of considering the petition for suspension of sentence, shall take into account, the deposit made by the petitioner , pursuant to the order passed by this court.

11. With the above direction, the Criminal Original Petition is allowed. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar (CS-II)

To:
The District Munsif cum Judicial Magistrate,
Cheranmahadevi

Copy To:

1.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

+2CCs to MR.N.DilipKumar, Advocate in sr.no.85790,85791.

AAVDS SV SAR-2:25.09.2018: 4P/8C

CrI.O.P. (MD) Nos.16925
and 17041 of 2018
20.09.2018