

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.03.2018

DELIVERED ON : 22.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.136 of 2018

Market Babu @ Ramesh Babu

... Petitioner

Vs

State By:

Inspector of Police,
E-6, Thiruporur Police Station,
Kancheepuram District.
(Crime No.413 of 2015)

... Respondent

Prayer: Criminal Revision filed under Section 397 r/w 401 of Cr.P.C., against the order dated 18.12.2017 passed by the learned Judicial Magistrate No.1, Chengalpattu, dismissing the petition filed under Section 70(2) Cr.P.C. in Cr.M.P.No.6322 of 2017 to recall the Non-bailable Warrant issued against the petitioner in the above C.C.No.209 of 2017 on his file.

For Petitioner : Mr.B.Janakiram

For Respondent : Mr.R.Suriyaprakash
Government Advocate (Crl.Side)

JUDGMENT

This criminal revision is preferred by the petitioner/accused against the order passed by the learned Judicial Magistrate No.1, Chengalpattu dated 18.12.2017 wherein the learned Judicial Magistrate dismissed the application filed in Cr.M.P.No.6322 of 2017 in C.C.No.209 of 2017 under section 70 (2) of Cr.P.C. to recall the Non-bailable warrant.

2.Brief case of the revision petitioner:

The revision petitioner is a journalist in an English Magazine and made complaint against the irregularities of the defacto-complainant who is working as a Manager in Thiruporur Murugan Temple controlled by Endowment. Enraged by the same, the defacto-complainant preferred a false complaint on 13.7.2015

against the revision petitioner with the respondent police and a case was registered in E-6 Thiruporur Police Station Crime No.413 of 2015 under Sections 294(b), 384,447,506(i) of IPC against the revision petitioner.

3.After completion of investigation, the respondent police filed the absconding charge sheet against the revision petitioner under Sections 294(b), 384, 447, 506(i) of IPC on 15.6.2016 before the Learned Judicial Magistrate No.1, Chengalpattu and the same was taken on file as C.C.No.209 of 2017 and the learned trial Court issued Non-Bailable warrant against the petitioner.

4.The petitioner preferred a petition to recall the Non-Bailable warrant before the Learned Judicial Magistrate No.1, Chengalpattu in C.M.P.No.6322 of 2017 and the same was dismissed.

5.Aggrrieved over the same, the revision petitioner challenged the order of NBW by filing this revision to set aside the order passed in Cr.M.P.No.6322 of 2017 in C.C.No.209 of 2017 and recall the NBW issued against the petitioner in the above C.C.No.209 of 2017 without surrender or appearance before the learned Judicial Magistrate No.I, Chengalpattu.

6.The learned counsel for the revision petitioner submits that a false complaint on 13.7.2015 was preferred against him and thereafter an FIR was registered in Crime No.413 of 2015 dated 15.7.2015 because of the fact that he questioned the act of the defacto-complainant, who is working as Manager of the temple.

7.The learned counsel for the petitioner submits that the respondent police filed absconding charge sheet against the petitioner before the learned judicial Magistrate No.I, Chengalpattu and the same was taken on file as C.C.No. 209 of 2007 and the issuance of Non-Bailable warrant without issuing the summon for appearance is illegal on the face of the record.

8.The learned counsel for the petitioner submits that he is not an absconder in the above said case and he is very well residing in the above address which is his native.

9.The learned counsel for the petitioner submits that also the only reason offered by the learned Judicial Magistrate is that the petitioner should appear before the Court or he should obtain anticipatory bail before the High Court and recall the Non Bailable Warrant against him is miscarriage of justice.

10.The learned counsel for the respondent opposed the criminal revision petition as not maintainable and supported the order passed by the learned Judicial Magistrate.

11.I heard Mr.B.Janakiram, learned counsel for the petitioner and Mr.R.Suriya Prakash, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

12.Before going in to the legal issues involved in this matter, the factual background of the case is that the revision petitioner raised the issue of irregularity in administering the temple against the defacto-complainant and outraged by the same, a false FIR has been registered.

13.Nextly, let me consider as to whether it would be appropriate to issue Non Bailable Warrant against the revision petitioner in the facts and circumstance of this case.

14.The Non-Bailable Warrant (NBW) issued by the Court is nothing but a process under Chapter-VI of the code of Cr.P.C. to secure the presence of the accused in Court. The said warrant shall be in force until it is either executed or the same is cancelled by the Magistrate who has issued the NBW under section 70(2) of Cr.P.C.

15.An accused, who is facing a non bailable warrant for his arrest may be put in either one of the following categories, namely

1) An accused who has been already on bail, but due to his absence, NBW was issued for his arrest and production.

2) An accused who was never arrested during the course of investigation against whom a NBW has been issued by the Court after taking cognizance of the offences.

16. In the second category of cases, where the accused was arrested in the course of investigation and after taking cognizance of the final report, if the trial Court issued NBW, if the accused approaches the Court for recalling the warrant under Section 70(2) of Cr.P.C., the learned trial Court on considering the gravity of the offences, role played by the accused, his roots in the society, likelihood of abscondence and need of custodial interrogation by the police are the factors to be taken into account while considering a petition for recall of warrant.

17. Undoubtedly, the case on hand falls within the second category. Therefore, when the revision petitioner approached the learned Magistrate under Section 70(2) of Cr.P.C., the learned Magistrate ought to have considered the above relevant factors. But in this case, a perusal of the order of the learned Judicial Magistrate would go to show that he has not all considered the above relevant factors.

18. In view of the above, I hold that the order of the learned Judicial Magistrate dated 18.12.2017 in Cr.M.P.No.6322 of 2017 in C.C.No.209 of 2017 is liable to be set aside and consequently, all the consequential proceedings including the execution of bond etc., shall also stand set aside.

19. In the result:

(a) this criminal revision petition is allowed and the non bailable warrant issued against the revision petitioner is set aside;

(b) the learned Judicial Magistrate No.I, Chengalpattu will entertain the Re-call petition of the revision petitioner without insisting upon his presence in the Court;

(c) the trial Court will allow the re-call petition and also direct the Police to return the NBW;

(d) the learned Judicial Magistrate No.I, Chengalpattu will continue the proceedings as devised under the Code of Criminal Procedure, 1973.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

- 1) The Judicial Magistrate No.I,
Chengalpattu.
- 2) The Inspector of Police,
E6, Thiruporur Police Station,
Kancheepuram District.
- 3) The Public Prosecutor,
High Court, Madras.

copy to: The Section Officer,
Criminal Section,
High Court, Madras.

+1 cc to Mr.B.Janakiram, Advocate, S.R.No.4674.

+2 ccs to Mr.B.Janakiram, Advocate, S.R.No.4674 (13/03/2019)

Judgment made in
Crl.R.C.No.136 of 2018

VSN-II (CO)
SSM(21/02/2019) (13/03/2019).



WEB COPY