

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.733 of 2019
and Crl.M.P.No.10278 of 2019

Ramesh @ Senthil,
S/o.Mr.N.Arjunan,
No.21, Vinayagar Koil Street,
Thattanchavady,
Puducherry.

.. Petitioner

Vs.

The Union Territory of Puducherry
Represented by the
Inspector of Police,
S.H.O - D Nagar Police Station,
Puducherry.

.. Respondent

Criminal Revision filed under Section 397 r/w 401
Cr.P.C., against the order dated 29.04.2019 passed in
Crl.A.No.6 of 2019 on the file of the II Additional Sessions
Court, Puducherry.

For Petitioner : Mr.V.S.Senthil Kumar

For Respondent : Mr.D.Bharatha Chakravarthi
Public Prosecutor
(Puducherry)

O R D E R

This petition has been filed seeking to set aside the
order dated 29.04.2019 passed in Crl.A.No.6 of 2019 on the
file of the II Additional Sessions Court, Puducherry.

2. The long and short of the facts is as under:

2.1 In connection with a murder that took place on
15.02.2017, the respondent police registered a case in Crime
No. 33 of 2017 against seven persons including the
petitioner herein, who was arrayed as A2. The police were
not able to secure the petitioner for about three months.
However, the police completed the investigation and filed

final report against seven accused, including the petitioner herein before the jurisdictional Magistrate.

2.2 In the final report, the petitioner was shown as an absconding accused. Therefore, the learned Magistrate issued non-bailable warrant on 15.05.2017 to secure the petitioner. The case was taken on file as P.R.C.No.2 of 2017. Since the police were not able to execute the non-bailable warrant, they filed necessary application before the learned Magistrate for declaring the petitioner as a proclaimed offender.

2.3 During the pendency of the proclamation proceedings, the petitioner filed a petition in CrI.O.P.No.7438 of 2017 under Section 438 Cr.P.C. seeking anticipatory bail, in which, this Court, while dismissing the petition on 20.06.2017, directed the petitioner to surrender before the Trial Court. However, the petitioner did not surrender within a reasonable time and was ultimately arrested by the police on 04.11.2017. The petitioner was declared as an absconding offender and his properties were also attached. Now, the petitioner is in custody and is facing trial along with others in S.C.No.1 of 2019 before the II Additional Sessions Court, Puducherry.

2.4 The petitioner filed CrI.M.P.No.4903 of 2017 for raising the attachment before the committal Magistrate, viz., Judicial Magistrate I, Puducherry, which was dismissed on 31.01.2018. Challenging the dismissal, the petitioner filed CrI.A.No.6 of 2019 before the Court of Session, Puducherry, which has been dismissed by the II Additional Sessions Judge, Puducherry on 29.04.2019, challenging which, the petitioner is before this Court.

3. Heard Mr.V.S.Senthil Kumar, learned counsel for the petitioner and Mr.D.Bharatha Chakravarthi, learned Public Prosecutor (Puducherry) for the respondent/State.

4. Mr.V.S.Senthil Kumar, learned counsel for the petitioner submitted that the proclamation proceedings were initiated during the pendency of the petition for anticipatory bail and therefore, it cannot be stated that the petitioner was an absconder, since he was legitimately pursuing remedies in law.

5. In the opinion of this Court, the remedy provided under Section 438 Cr.P.C. is not an entitlement like an appeal but is only a discretionary remedy. The fact remains that after registration of FIR on 15.02.2017, the police were not able to arrest the petitioner and therefore, they filed final report against the petitioner showing him as an absconding accused. Only thereafter, the committal Court had

issued non-bailable warrant on 15.05.2017.

6. At this juncture, it is apropos to point out that a three Judge Bench of Supreme Court, in *Girish Kumar Suneja Vs CBI*¹, has delineated the revisional jurisdiction as under:

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. As we see it, there appear to be only two such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 of the Cr.P.C. (emphasis supplied)"

7. Bearing in mind the aforesaid judgment, this Court is of the view that, this is not a fit case, in which, the concurrent findings of fact recorded by the Courts below require to be interfered with.

8. The learned counsel for the petitioner further submitted that when the petitioner is in custody, the attached property should not be brought to sale since the land syndicate would take undue advantage and grab the property for a fleabite consideration.

9. There appears to be much force in the submission of the learned counsel for the petitioner. Therefore, this Court directs the Judicial Magistrate I, Puducherry, not to bring the attached properties of the petitioner to sale until his release from custody in S.C.No.1 of 2019 or disposal of the said case, whichever is earlier.

In the result, the criminal revision petition is dismissed. Connected Crl.M.P. is closed.

Sd/-
Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

nsd
To

1. The II Additional Sessions Judge,
Puducherry.
2. The Judicial Magistrate I,
Puducherry.
3. The Inspector of Police,
S.H.O - D Nagar Police Station,
Puducherry.
4. The Public Prosecutor, (Puducherry) High Court,
Madras - 104.

+1cc to Mr.V.S.Senthil Kumar , Advocate SR.No. 64779
+1 cc to Government Pleader Sr.No. 64785

A.SK (06/09/2019)

Crl.R.C.No.733 of 2019

सत्यमेव जयते
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