

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.21713 of 2019

and

Crl.M.P.No.11261 of 2019

1.M/s.Kalasa Estate,
Rep by its Partners,
S.O.Siva Subramainum and
S.O.S.Sockalingam.

2.S.O.Sivasubramaniam

3.S.O.S.Sockalingam

.... Petitioners

Vs.

M/s.Bombay Burmah Trading,
Corporation Ltd, Mudis, Valparai,
Rep by its Manager (Legal & FR)
Ms.Menaka Chinnathambai

.... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order passed in Crl.M.P.No.1326 of 2019 in STC.No.471 of 2015 dated 31.07.2019 and recall the Non Bailable Warrant issued by the Learned District Munsif Cum Judicial Magistrate, Valparai.

For Petitioner : Mr.V.Karthick, Senior Counsel
for Mr.S.Karthikeyan

For Respondent : Mr.A.Sasidharan

ORDER

This petition has been filed against the order passed by the Court below dismissing the petition filed for recalling the Non Bailable Warrant issued against the petitioners.

2.The petitioners are facing Trial before the Court below for an offence under Section 138 of the Negotiable Instruments

Act. This court has already fixed a time limit for completion of the case by an order dated 02.01.2019 in CrI.O.P.No.27072 of 2019, wherein the Court below was directed to complete the proceedings within a period of two months.

3.It is seen from records that the petitioners have already completed the final arguments and filed written arguments before the Court below on 28.05.2019. The case was repeatedly adjourned only for the arguments on the side of the complainant. In the mean time, since the petitioners did not appear before the Court below, the Non Bailable Warrant was issued against the petitioners on 28.06.2019. The petitioners filed an application under Section 70(2) of Cr.P.C. to recall the Non Bailable Warrant on 31.07.2019, without insisting for the appearance of the petitioners.

4.This application has been dismissed by the Court below on the ground that the recall petition cannot be entertained without the presence of the petitioners and that because of the pending Non Bailable Warrant, the court below is not in a position to complete the proceedings as directed by this Court.

5.Mr.V.Karthick, learned Senior Counsel appearing on behalf of the petitioners submitted that the petitioners have already completed their final arguments and submitted the written arguments and the case is now kept pending only for completion of the final arguments on the side of the complainant. The learned Senior Counsel submitted that the Court below ought not to have insisted for the appearance of the petitioners in order to recall the Non Bailable Warrant and the Non Bailable Warrant can be recalled even without insisting for the presence of the accused persons in line with the judgment of this Court in Karuppiyah @ Chinnathambi vs. Inspector of Police, Embal Police Station, Avudaiyarkoil Taluk, Pudukottai District reported in (2014) 4 MLJ (CrI) 634 and Dr.Zubaida Begum vs. State represented by the Inspector of Police, District Crime Branch, Kancheepuram reported in (2016) 2 MLJ (CrI) 490.

6.The learned Counsel appearing on behalf of the respondent submitted that the complainant will complete the arguments in the next hearing and the time can be fixed for the completion of the proceedings.

7.This Court is of the considered view that the Court below ought to have recalled the Non Bailable Warrant without insisting for the presence of the petitioners. The petitioners have already completed their final arguments and therefore there was actually no real need for the petitioners to be present before the Court below, since the case is at the stage of final arguments on the side of the complainant.

8.In the result, the order passed by the Court below in C.M.P.No.1326 of 2019, dated 31.07.2019 is hereby set aside and the Non Bailable Warrant issued against the petitioners is hereby recalled. The petitioners shall be present before the Court below at the time of passing of the final judgment. On all the other occasions, the Counsel shall represent the petitioners before the Court below.

9.This Criminal Original Petition is accordingly allowed and the Court below is directed to complete the proceedings in S.T.C.No.471 of 2015 within a period of one month from the date of receipt of copy of this order. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The District Munsif-Cum-Judicial Magistrate,
Valparai.
- 2.The Inspector of Police,
Thiruninravur Police Station,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.21713 of 2019
and
CrI.M.P.No.11261 of 2019

WEB COPY

ad[col
srg 17/09/2019