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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.10.2019

Pronounced on : 22.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.Nos.25586 & 25587 of 2019

S.Ramesh .. Petitioner in both O.Ps/Accused
Vs.

1.State rep. by
The Inspector of Police,
J-1, Saidapet Police Station,
(Crime No.1815 of 2012 &
Crime No.3752 of 2012),
Chennai-15.

2.G.Sakthi Saravanan
(R2 is impleaded as per order in
Crl.M.P.Nos.14174 & 14175/2019 in
Crl.O.P.Nos.25586 & 25587/219
dated 01.10.2019) .. Respondents in both O.Ps.

Common Prayer: Criminal Original Petitions filed under Section 482 Cr.P.C., praying to recall the Non Bailable Warrants issued against the petitioner by the learned XVIII & IX Metropolitan Magistrate, Saidapet in C.C.No.4228 of 2015 & C.C.No.1725 of 2013 dated 25.06.2019 respectively.

For Petitioner : Mr.K.Thilageswaran

For Respondent-1 : Mr.C.Iyyapparaj, APP

For Respondent-2 : Mr.K.Subramanian, Sr. Counsel
for Mr.S.N.Subramani

C O M M O N O R D E R

The petitioner seeks to recall the Non Bailable Warrants issued against him by the learned XVIII & IX Metropolitan



Magistrate, Saidapet, Chennai in C.C.No.4228 of 2015 & C.C.No.1725 of 2013 dated 25.06.2019 respectively in these Criminal Original Petitions.

2. Heard Mr.K.Thilageswaran, learned counsel for the petitioner and Mr.K.Subramanian, learned Senior counsel for the second respondent as well as Mr.C.Iyyapparaj, learned Additional Public Prosecutor for the first respondent.

3. According to the learned counsel for the petitioner, the petitioner has been charged for certain offences in connection with the administration of Meenakshi Mission Hospital and S.R. Trust in which, a Non Bailable Warrant followed by an Order of Proclamation under Section 82 of the Criminal Procedure Code came to be issued. In connection with the Proclamation Order, an FIR was registered in Cr.No.1815 of 2015 under Section 174 Cr.P.C., which culminated into filing of a charge sheet in C.C.No.4228 of 2015 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai. Simultaneously, the petitioner was also convicted in criminal proceedings in C.C.No.58 of 2012 on 03.01.2014, which also revolves around the same dispute. On appeal in C.A.No.9 of 2014, the conviction order was confirmed and on further revision before the Madurai Bench of the Madras High Court, the sentence was suspended in CrI.R.C.(MD) No.330 of 2019. In the meanwhile, the petitioner was not able to appear before the learned Metropolitan Magistrate, Saidapet and his petition filed under Section 317 Cr.P.C., came to be dismissed and Non Bailable Warrants were issued in the above said two cases on 25.06.2019. According to the learned counsel, the petitioner has been continuously appearing for most of the hearings and being a reputed and law abiding person, he does not intend to protract the proceedings, but is willing to co-operate and therefore, sought for recall of the warrants.

4. Per contra, the learned Senior counsel for the second respondent on the other hand, opposed the submissions and stated that the petitioner is deliberately and wilfully delaying the trial right from the beginning and therefore no indulgence should be extended to him. According to the learned Senior counsel, the petitioner had abused the process of law by suppressing the various factual aspects of the case and by wantonly omitting to implead this respondent, which necessitated him to file an implead petition. He had further submitted that the petitioner had misled this Court by suppressing vital material facts. According to the learned Senior counsel, the High Court was misled as if the matter was settled between the



parties and thereby the proceedings in C.C.No.1725 of 2013, C.C.No.4228 of 2015 and C.C.No.6766 of 2014 came to be quashed on 01.03.2018. At the instance of this respondent, the order dated 01.03.2018 was recalled, as against which, the petitioner had filed SLP. Nos.5167, 5174, 5175 of 2018 before the Hon'ble Supreme Court, in which the Hon'ble Supreme Court refused to interfere with the recall order and remanded back the matter for disposal of the criminal original petition on merits.

5. The petitioner has been absconding for more than 1 ½ years. The petitioner's contention that he has been appearing for most of the hearing dates was also controverted stating that the petitioner had filed application under Section 317 Cr.P.C., for more than 14 times and NBW was pending for almost 85 hearings in the last 5 years. In this background, he sought for dismissal of the Criminal Original Petitions.

6. I have given careful consideration to the submissions made by the respective counsels.

7. The second respondent herein was initially not made as a party respondent in both these Criminal Original Petitions. In normal circumstances, when the petitioner seeks for recall of the Non Bailable Warrant, probably, the non impleadment of the defacto complainant may have had a lesser significance. But, in the instant case, when the second respondent herein had chosen to file a implead petition, which came to be subsequently ordered on 01.10.2019, certain important and relevant facts which may have a bearing on the final decision to be taken in the Original Petitions, were revealed. Before addressing such of those factors, it would be appropriate to record a glimpse of the basic facts of the two charge sheets, in which the impugned Non Bailable Warrants came to be issued.

8. The second respondent herein had created a Trust, by the name of S.R. Trust. It is stated that when he intended to induct the petitioner herein, who is his son, as well as his daughter, as trustees with a condition that their induction would come into effect, after his life time. Prior to its registration, the petitioner and his sister are stated to have manipulated and forged the Trust Deed by inserting pages to the same, without the knowledge of the second respondent herein, thereby enabling them to act as Trustees with immediate effect. The forgery came to light through a opinion of the forensic expert. Based on the second respondent's complaint into this forgery of the document, an investigation was conducted and charge sheet laid, which was taken on file in C.C.No.1725 of 2013 by the learned IX Metropolitan Magistrate, Saidapet, Chennai. In view of the non co-operation of the petitioner in



the investigation, he along with others were shown as absconding accused in the charge sheet.

9. During the pendency of the proceedings in C.C.No.1725 of 2013, the petitioner failed to appear before the trial Court owing to which a Non Bailable Warrant was issued. After prolonged absence, the trial Court initiated proclamation proceedings against the petitioner and declared him as a proclaimed offender on 07.03.2015 and thereby issued proclamation order under Section 82 of the Criminal Procedure Code and directed the police to publish the proclamation order for the appearance of the petitioner before the Court.

10. The petitioner challenged the said proclamation order in CrI.R.C.No.457 of 2015 before this Court and when the revision was pending, the petitioner had chosen to appear before the trial Court on 02.07.2015 based on the direction of this Court and thereafter, continuously failed to appear which led to dismissal of the surrender application as well as the application for recalling the warrants. In view of the same, the Criminal Revision was dismissed on 08.07.2015 as infructuous.

11. Thereafter, the second respondent's complaint against the petitioner for an offence under Section 174 (A) of IPC came to be registered through orders under Section 156(3) Cr.P.C. On completion of the investigation, a final report was filed and taken on file in C.C.No.4228 of 2015 by the learned XVIII Metropolitan Magistrate, Saidapet, Chennai for the offence under Section 174(A) IPC., against the petitioner and others.

12. In view of the petitioner's non appearance in both these proceedings in C.C.No.1725 of 2013 and C.C.No.4228 of 2015, Non Bailable Warrants came to be issued on 25.06.2019, against which, the present Criminal Original Petitions have been filed under Section 482 Cr.P.C., to recall the warrants.

13. Had the second respondent not been made a party to the present Criminal Original Petitions, most of the aforesaid facts may not have been brought to the notice of this Court. The second respondent was not only a proper party to these petitions but also a necessary party. The petitioner's original attempt to keep the second respondent away from these petitions requires to be deprecated.

14. At a first blush, a plea for recall of the NBW would be viewed leniently but, on the facts that the petitioner happens to be a proclaimed offender, the antecedents during the course



of the proceedings and the conduct of the petitioner raises further doubts as to whether such normal leniency could be extended to him for recall of the warrants.

15. It is brought to the notice of this Court that apart from the NBWs issued in these two Calender Cases, this Court, by an order dated 05.09.2014 passed in Crl.O.P.No.16067 of 2013, had directed the trial Court to complete the trial within three months, which order could not be implemented, owing to the non appearance of the petitioner, leading to issuance of further proclamation orders. The second respondent had filed a Contempt Petition No.1919 of 2015 before this Court and the notice issued in this Contempt Petition also came to be disregarded and a NBW was issued on 09.12.2016 in the Contempt Petition No.1919 of 2015, which is yet to be executed since it is stated that the petitioner is evading service.

16. There is yet another Contempt Petition pending against the petitioner herein in Contempt No.1482 of 2017 before the Division Bench of this Court, in which statutory notice was issued on 13.08.2017, against which service of notice as somehow been evaded.

17. The learned counsel for the petitioner would submit that the petitioner has been continuously appearing for most of the hearings and is that he is a law abiding person. This statement is controverted and seriously objected by the learned Senior counsel for the second respondent.

18. A perusal of the records reveal that during the past over five years, among 165 hearings that took place in C.C.No.1725 of 2013, the petitioner herein had appeared for about 60 hearings and on 85 occasions, Non Bailable Warrants were issued/pending. This conduct of the petitioner, cannot be construed to be co-operating with the proceedings.

19. Apart from these aspects, it is also noticed that earlier the petitioner herein had filed two Criminal Original Petitions in Crl.O.P.No.17852 of 2016 and Crl.O.P.No.10999 of 2016 seeking to quash the proceedings in C.C.No.4228 of 2015 and the dismissal order passed under Section 17(2) of Cr.P.C. This Court, while dismissing the said petitions on 20.09.2016 had condemned the conduct of the petitioner and was of the view that the petitioner had abused the process of law. It would be relevant to extract the said portions of the order, which reads as follows:

"14. The fact remains that Ramesh is an absconder and being outlawed, cannot claim any privilege of law and as such, no indulgence can be shown to him. Therefore, the challenge made by



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Ramesh to the proceedings in C.C.No.4228 of 2015 as well as to the order of proclamation, is not maintainable. Accordingly, the Criminal O.P.17825 of 2016 and Crl.R.C.55 of 2016 are liable to be dismissed.

15. As regards the challenge to the proceedings dated 10.05.2016 made in Crl.O.P.No.10999 of 2016 is concerned, since an N.B.W. was issued against the petitioner/Ramesh in C.C.No.4228 of 2015 which was pending for trial for the offence under Section 174(A) IPC, he moved a petition under Section 70(2) Cr.P.C., to recall the NBW, which was dismissed by the Court below by order, dated 10.05.2016.

16. Challenging the said order, learned counsel for Ramesh would submit that Ramesh was implicated in another crime No.573 of 2016 on the file of K.Pudur Police Station, for the offences under Sections 447 and 506(i) IPC, in which, he was granted anticipatory bail by the Madurai Bench of this Court in Crl.OP (MD) No.6730 of 2016 on 26.4.2016 subject to condition that he shall report before the learned Judicial Magistrate No.VI, Madurai on every working day between 10.30 a.m. and 4.45 p.m., therefore, Ramesh was unable to surrender in person before the Court below in order to seek recalling of the NBW. However, the fact remains that the warrant against Ramesh in C.C.No.4228 of 2015 has been pending even prior to 26.4.2015. If a person wants to recall NBW, he should have physically surrendered before the concerned Court and pray to recall the warrant. Of course, in extraordinary circumstances, the Court can entertain the petition and recall the warrant even without physical surrender of the accused. Having regard to the entire facts and circumstances, this Court is of the view that this is not an extraordinary case, for which, this Court can give privilege to Ramesh since his conduct shows his scant regard for law. In fact, by taking note of the fact that this Court already directed the trial Court to complete the trial and dispose of C.C.No.1725 of 2013 as expeditiously as possible and further, if the petition is allowed, the trial of the case would be affected, the Court below has rightly declined to recall the warrant issued against Ramesh and



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consequently, dismissed the petition filed under Section 70(2) Cr.P.C. In such view of the matter, this Court does not find any scope to interfere with the same. Hence, the Criminal O.P.10999 of 2016 is also liable to be dismissed.

In the result, both the Criminal Original Petitions as well as Criminal Revision Case, are dismissed. Consequently, all connected Crl.M.Ps. are closed. Since this Court already rejected grant of anticipatory bail to the petitioner, as and when the petitioner/S.Ramesh surrenders, the trial Court is directed to first remand him to judicial custody and thereafter proceed in accordance with law. The Deputy Commissioner of Police, South is directed to form a special team to apprehend Ramesh and produce him before the trial Court, expeditiously."

The aforesaid order is self explanatory, in which the learned Judge of this Court had condemned the petitioner's conduct and found it appropriate to decline the recall of the earlier warrant issued against the petitioner.

20. On an overall appraisal of the entire cases in hand, this Court is also of the view tht the trial Court had rightly declared the petitioner to be a proclaimed offender and had issued the NBW for his non co-operation. The trial Court is also justified in rejecting the earlier applications filed under Section 317 Cr.P.C. Since the petitioner herein had abused the process of law, no leniency can be extended to him in any manner. Accordingly, both the Criminal Original Petitions stand dismissed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

DP

To

1.The IX Metropolitan Magistrate,
Saidapet, Chennai.

2.The XVIII Metropolitan Magistrate,
Saidapet, Chennai.



3.The Inspector of Police,
J-1, Saidapet Police Station,
Chennai-15.

4.The Public Prosecutor,
Madras High Court.

+1cc to Mr.S.N.Subramani, Advocate sr.97770
+1cc to Mr.K.Thilageswaran, Advocate sr.97967

Order made in

Crl.O.P.Nos.25586 & 25587 of 2019

ca(co)
nr 27/12/2019