

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2019

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.27692 of 2017

M.Sathishkumar

Petitioner

vs.

State by

1. The Inspector of Police,
B-11, Saibaba Colony Police Station,
Coimbatore.

2. B.Ashokkumar

Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order made in Crl.M.P.No.2693 of 2017 in C.C.No.232 of 2014, dated 11.05.2017 on the file of the Judicial Magistrate, FTC at Magistrate Level No.II, Coimbatore, Coimbatore District by recalling NBW issued by the Judicial Magistrate, FTC at Magistrate Level No.II, Coimbatore, Coimbatore District.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.C.Raghavan

Government Advocate for R1

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the petition filed by the petitioner to recall the non bailable warrant issued against the petitioner.

2. The petitioner faced trial for an offence under Section 138 of the Negotiable Instruments Act before the Judicial Magistrate, Fast Track Court at Magistrate Level No.II, Coimbatore which was initiated by the 2nd respondent. After detailed trial, by judgment dated 23.02.2017, the petitioner was convicted and was sentenced to undergo one year simple imprisonment and to pay a fine of Rs.10,000/- and in default to pay the fine amount to undergo two months simple imprisonment.

3. The petitioner filed an appeal against the said judgment before the Principal District and Sessions Judge, Coimbatore in Crl.A.No.56 of 2017. Along with the appeal, a petition was also filed for suspension of sentence in Crl.M.P.No.593 of 2017. The Appellate Court dismissed the suspension of sentence petition on the ground that the petitioner was not present before the trial Court on the date of judgment and therefore a non bailable warrant has been issued against the petitioner and hence he is not entitled for the relief of suspension of sentence.

4. The petitioner challenged this order before this Court in Crl.O.P.No.5281 of 2017. When the matter came up before this Court, this Court suggested that the petitioner can move the trial Court for recalling the non bailable warrant and thereafter again file a fresh petition before the Appellate Court seeking for suspension of sentence. Accordingly the petitioner withdrew the petition and approached the trial Court by filing an application in C.M.P.No.2693 of 2017 to recall the non bailable warrant.

5. The trial Court by impugned order dated 11.05.2017 dismissed the petition filed by the petitioner on the ground that the trial Court does not have jurisdiction to entertain the petition and it has become a functus officio. Aggrieved by the same the present petition has been filed before this Court.

6. Mr.C.Prakasam, the learned counsel for the petitioner submitted that the criminal appeal is pending till today and the petitioner must be given an opportunity to prosecute his remedy in the appeal. The learned counsel further submitted that the trial Court could have recalled the non bailable warrant by taking into consideration the fact that the appeal is pending and that could have enabled the petitioner to again approach the Appellate Court seeking for suspension of sentence. The learned counsel further submitted that this Court can consider imposing any stringent condition and also fix a time limit for the completion of the criminal appeal.

7. The notice sent to the respondent has not been served. This Court is of the considered view that it is not necessary to issue notice to the 2nd respondent since the subject matter of challenge is the dismissal of the petition to recall non bailable warrant and it is a matter between the petitioner and the Court.

8. The petitioner has suffered judgment of conviction and sentence for an offence under Section 138 of the Negotiable Instruments Act and he is prosecuting the criminal appeal before the Principal District and Session Court, Coimbatore. If in the mean time the petitioner is arrested, the whole exercise of

conducting the appeal will become a waste and therefore the petitioner would be entitled to be considered for suspension of sentence pending the appeal.

9. In order to afford an opportunity to the petitioner to prosecute the appeal and in the mean time not to be subjected to any imprisonment pursuant to the judgment of the trial Court, this Court deems it fit to pass the following order.

10. The non bailable warrant issued by the trial Court dated 23.02.2017 is hereby recalled. The petitioner is directed to deposit a sum of Rs.90,000/- in to the credit of C.C.No.232 of 2014 on the file of Judicial Magistrate-II, Coimbatore within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the petitioner shall file a petition seeking for suspension of sentence before the Appellate Court in CrI.A.No.56 of 2017 and Appellate Court shall suspend the sentence by imposing necessary conditions. The Appellate Court shall take into consideration the fact that the petitioner is depositing 50% of the cheque amount pursuant to the orders passed by this Court.

11. The Appellate Court is directed to dispose of CrI.A.No.56 of 2017 within a period of four months from the date of receipt of a copy of this order. It is made clear that if the petitioner does not deposit the amount specified by this Court within the time limit, the order passed by this Court recalling the non bailable warrant will be canceled automatically and the trial Court shall execute the non bailable warrant and secure the petitioner in order to make him to undergo the sentence of imprisonment imposed by the trial Court.

ssr

Sd/-

Assistant Registrar (CS-IX)

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Sub Assistant Registrar

To

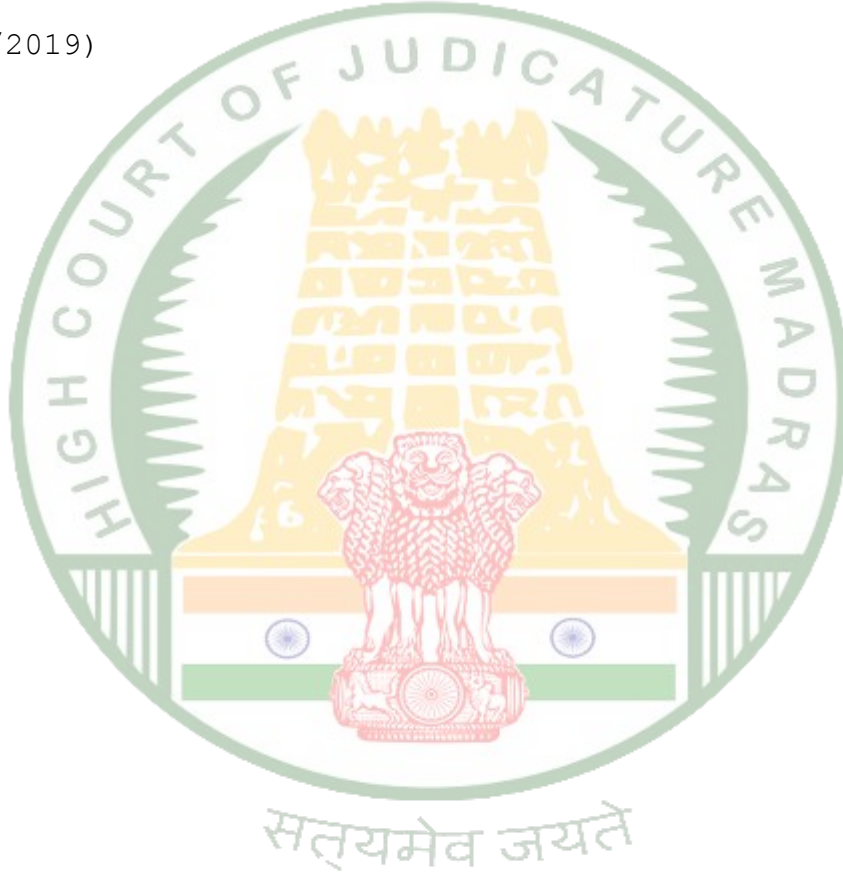
1.The Principal District & Sessions Judge,
Coimbatore.

2. The Judicial Magistrate,
FTC at Magistrate Level No.II,
Coimbatore, Coimbatore District.

3. The Inspector of Police,
B-11, Saibaba Colony Police Station,
Coimbatore.
4. The Public Prosecutor,
High Court of Madras,
Madras.

CrI.O.P No.27692 of 2017

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