



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2019

CORAM :

WEB COPY

THE HONOURABLE MR. JUSTICE N. SESHASAYEE

Cr1.O.P.(MD)No.3585 of 2019

and

Cr1.M.P.(MD)No.2038 of 2019

1.K.Abdul Hameed

2.K.Mohamed Siddiq

... Petitioners / *De facto*
Complainants

/Vs./

State represented by
The Inspector of Police,
Cumbum North Police Station,
Theni District.

... Respondent / De-Jude
Complainant

Prayer: Petition - filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the issue of witness warrant dated 18.01.2019 against the petitioner in C.C.No.205 of 2007 on the file of the Judicial Magistrate Court, Bodinayakanur and set aside the same.

For Petitioners : Mr.K.Abdul Hameed
(Party in Person)

For R-1 & R-2 : Mr.V.Neelkandan
Additional Public Prosecutor

ORDER

The petitioners have come forward before this Court seeking to set aside the order of witness warrant on them.

2. The first petitioner [party in person] appeared in person and made the following submissions:

(i) The petitioners had preferred a complaint against Shahul Hameed @ Kaja Mohideen, S/o.Abdulla, for the offences under Sections 147, 448, 294, 506(ii) and 109 IPC for the occurrence that had taken place on 01.02.2003. The case was registered in Crime No.29 of 2003. After the completion of investigation, the final report was laid and the case was taken on file in C.C.No.437 of 2003 by the learned Judicial Magistrate, Uthamapalayam, which thereafter was transferred to the Judicial Magistrate, Bodinayakanur and taken on file in C.C.No.205 of 2007. In that case, NBW was issued against all the accused persons.



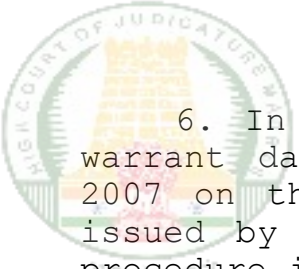
(ii) Be that as it may, the police have arrested one Shahul Hameed @ Mariappan, S/o.Vilangaiya and produced him before the Court. Later, on coming to know that the police have arrested a wrong person namely Shahul Hameed @ Mariappan, S/o.Vilangaiya, instead of Shahul Hameed @ Kaja Mohideen, S/o.Abdulla, the petitioner has moved the Judicial Magistrate with Cr.M.P.No.4804 of 2007 and after hearing all sides, the Court has allowed the petitioner's petition and let the person wrongly arrested by the police go. While so, on 15.10.2018, A1 to A4 and A7 have surrendered. The petitioner has now come to know that again the same Shahul Hameed @ Mariappan, S/o.Vilangaiya, has been said to have been proceeded against and therefore, the petitioner has informed the Chief Judicial Magistrate about the mistake that is being committed by the trial Court. The petitioner now complains that since Shahul Hameed @ Kaja Mohideen, S/o.Abdulla, the real accused, has not been brought before the Court and just to harass, warrant has been issued to the petitioners.

(iii) The first petitioner [party in person] now submits that he is willing to appear and depose before the Court as to the facts and he needs an opportunity to place the real fact before the Court during trial. Inasmuch as the real accused was not brought before the Court, issuing warrant at this stage may not be profitable.

3. Since it has gone on record that the petitioner, who claims he has studied upto 11th standard but appears to have familiarized more than adequately than a junior Advocate, submitted that no profitable exercise would be done by bringing a wrong person before the Court, and forcing him to depose against a person whom he has not prosecuted, and that it is a clear where prosecution flirt with fraud. When the petitioner has already informed the Court and the Court has let Shahul Hameed @ Mariappan, S/o.Vilangaiya Vide its Order in CrI.M.P.No.4804 of 2007, it is a horrendous error on the part of the prosecution to bring the same man before the Court, especially when the prosecution has not chosen to challenge the original order of the learned Magistrate. This is an aspect that the learned Magistrate shall not over look.

4. Since the matter is pending for over 16 years now, the trial Court can as well proceed with the case as regards those who have already appeared. Therefore, the trial Court is now directed to follow such procedure for splitting up the case, and expedite the trial vis-a-vis those accused person have already appeared before the Court within a period of two months from the date of receipt of a copy of this order.

5. So far as the prosecution is concerned, it is cautioned that if a wrong person is brought before the Court inspite of the fact that the Court has already let him go free Vide its earlier order referred to above, it will be in trouble.



6. In view of this development, this Court quash the witness warrant dated 18.01.2019 against the petitioner in C.C.No.205 of 2007 on the file of the Judicial Magistrate Court, Bodinayakanur issued by the Court and directs the trial Court to separate the procedure in the manner known to law indicated above.

7. Accordingly, this criminal original petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS

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To

- 1.The Judicial Magistrate, Bodinayakanur.
- 2.The Inspector of Police,
Cumbum North Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Order made in
Cr1.O.P.(MD)No.3585 of 2019
08.03.2019

CS: (10/07/2019) 3P 4C