



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	12.03.2019
Date of Order	29.03.2019

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Cr1.R.C(MD)No.92 of 2019**

A.Vadivel

: Petitioner/Petitioner/A2

Vs.

State rep. by
The Inspector of Police,
Valanadu Police Station,
Marungapuri Taluk,
Trichy District.
(Crime No.222 of 2010)

: Respondent/Complainant

Prayer: Criminal Revision filed under Section 397 of the Criminal Procedure Code against the order passed by the Principal Sub Court, Trichy, in Cr.M.P.No.43 of 2019, in S.C.No.122 of 2015, dated 11.02.2019.

For Appellant : Mr.S.C.Herold Singh

For Respondent : Mr.A.Robinson,

Government Advocate (Criminal side)

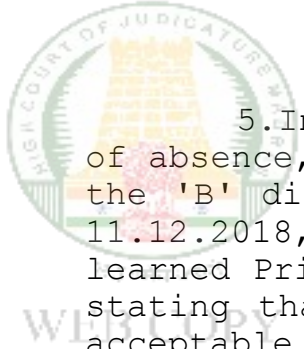
O R D E R

This Criminal Revision is directed against the order passed by the Principal Sub Court, Trichy, in Cr.M.P.No.43 of 2019, in S.C.No.122 of 2015, dated 11.02.2019.

2.Heard both sides and perused the materials available on record.

3.The petitioner is facing trial in S.C.No.122 of 2015 on the file of the Principal Sub Court, Trichy. NBW was pending as against the petitioner from 13.06.2018. The petitioner filed Cr1.O.P(MD) No.9892 of 2018 before this court seeking permission to appear before the Principal Sub Court, Trichy, for recalling the warrant and the above petition was allowed. The petitioner appeared before the Principal Sub Court, Trichy and recall the warrant passed against him and the case stands posted to 11.02.2019. On that day, the petitioner is not present. Hence, the learned counsel appearing for the petitioner filed a petition under Section 317 Cr.P.C.

4.On perusal of the petition filed under Section 317 Cr.P.C by the petitioner, wherein it was stated that on 11.02.2019, the petitioner was not well. But the learned Principal Assistant Sessions Judge dismissed the petition stating that the petitioner is having the habit of absence and only he surrendered for recalling the warrant and hence, the learned Principal Assistant Sessions Judge, dismissed the petition filed under Section 317 Cr.P.C.



5. In this case, to prove that the petitioner is not having of absence, the learned counsel for the petitioner filed the copy of the 'B' diary. On perusal of the 'B' diary, it is stated that on 11.12.2018, the petitioner appeared for the above case. Hence, the learned Principal Assistant Sessions Judge, dismissed the petitioner stating that the petitioner is having the habit of absence is not acceptable.

6. The petitioner stated in his petition that he was unwell on 11.02.2019. Hence, the reason stated in the petition is acceptable. It is seen from the records that on 11.02.2019, the case was posted for examination of PW6 and PW7. Hence, on that day, the presence of the petitioner is not necessary, since PW6 and PW7 are not eye witnesses.

7. For the reasons stated above, this court is of the considered view that the order passed by the Principal Sub Court, Trichy, in Cr.M.P.No.43 of 2019 in S.C.No.122 of 2015, dated 11.02.2019 is not correct. The reasons stated in the petition filed under Section 317 Cr.P.C are acceptable.

8. In the result, the criminal revision is **allowed**. The order of the Principal Sub Court, Trichy, passed in Cr.M.P.No.43 of 2019 in S.C.No.122 of 2015, dated 11.02.2019 is set aside.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Principal Sub Judge, Trichy.
 2. The Principal Assistant Sessions Judge, Trichy.
 3. The Inspector of Police, Valanadu Police Station, Marungapuri Taluk, Trichy District.
 4. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.
- +1 CC to M/s.S.C.HEROLD SINGH, Advocate SR-58162.

Cr1.RC. (MD) No.92 of 2019
29.03.2019