



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN
Cr1.R.C. (MD)Nos.363 and 364 of 2019

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R.R.Gopal Jee : Petitioner in both petitions
Vs.

M/s Rajah Holdings
rep. by Mr.Kannan
Authorised Power Agent of
R.V.Subramanian, Partner
Son of Late Venugopal
No.69, Town High School Road,
Kumbakonam - 612 001. : Respondent in Cr1.RC (MD)No.363 of 2019

Shantha Jayaraman
rep. by its Power Agent,
Kannan,
No.69, Town High School Road,
Kumbakonam - 612 001. : Respondent in Cr1.RC (MD)No.364 of 2019

PRAYER in Cr1.RC (MD)No.363 of 2019: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to set aside the order dated 07.05.2019 made in Cr1.M.P.No.3392 of 2019 in S.T.C.No.450 of 2018 on the file of the Judicial Magistrate No.II, Kumbakonam to recall the Bailable Warrant without insisting the presence of the petitioner.

PRAYER in Cr1.RC (MD)No.364 of 2019: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to set aside the order dated 07.05.2019 made in Cr1.M.P.No.3393 of 2019 in S.T.C.No.460 of 2018 on the file of the Judicial Magistrate No.II, Kumbakonam to recall the Bailable Warrant without insisting the presence of the petitioner.

In both petitions;

For Petitioner : Mr.T.Leninkumar
For Respondents : Mr.G.Madhavan for
M/s AL. Gandhimathi

COMMON ORDER

Both the criminal revision cases are filed to set aside the orders passed in Cr1.M.P.Nos.3392 and 3393 of 2019 in S.T.C.Nos.450 and 460 of 2018 on the file of the Judicial Magistrate No.II, Kumbakonam to recall the Bailable Warrant without insisting the presence of the petitioner.



2.The learned counsel for the petitioner submits that the respondents herein have filed a complaint under Section 138 of Negotiable Instruments Act in S.T.C.Nos.450 and 460 of 2018 respectively before the Judicial Magistrate No.II, Kumbakonam. When the matter was posted on 12.02.2019 before the trial Court, the petitioner had failed to appear and hence, Non Bailable Warrant was issued by the learned Judicial Magistrate. Aggrieved by the same, the petitioner has filed the petitions in Crl.M.P.Nos.3392 and 3393 of 2019 under Section 70(2) of Cr.P.C to recall the warrant issued against him. The learned Judicial Magistrate had dismissed the applications without appreciating the settled preposition of law regarding recalling of Non Bailable Warrant under Section 70(2) Cr.P.C. In support of his contentions, the learned counsel produced a copy of the order dated 02.03.2016 made in Crl.O.P.No.4514 of 2016.

3.Per contra, the learned counsel appearing for the respondents would submit that the respondents have instituted the complainants under Section 138 of Negotiable Instruments Act in STC No.450 and 460 of 2018 on the file of the Judicial Magistrate No.II, Kumbakonam. It is the further case of the respondents that the petitioner/accused is dragging on the proceedings. Further, when the matter was posted on 12.02.2019, the petitioner / accused willfully and deliberately did not attend the hearing and thereby trying to drag on the proceedings and hence, it was appropriate that the learned Judicial Magistrate has issued the Non Bailable Warrant on 12.02.2019. He would also supported the impugned order on the ground that the accused person is very much necessary for recalling the Non Bailable Warrant. The purpose of issuing Non Bailable Warrant itself is only to secure the accused and his presence to continue the proceedings. In such circumstances, the petitioner has deliberately failed to appear on 12.02.2019 and hence, the learned Judicial Magistrate has issued the Non Bailable Warrant. Hence, the petitions in Crl.M.P.Nos.3393 of 2019 filed by the petitioners to recall the warrant without his presence is perfectly invalid and needs no interference.

4.Heard both sides.

5.It is the admitted fact that respondents herein have filed a complaint under Section 138 of Negotiable Instructs Act in S.T.C.Nos.450 and 460 of 2018 respectively before the Judicial Magistrate No.II, Kumbakonam and when the matter was posted on 12.02.2019, the petitioner had failed to appear before the trial Court and hence, Non Bailable Warrant was issued by the learned Judicial Magistrate. Against which, the petitioner has filed the petitions in Crl.M.P.Nos.3392 and 3393 of 2019 under Section 70(2) of Cr.P.C to recall the warrant issued against him. The said applications were dismissed. Hence, the present petitions. The

<https://hcservicesports.com/in/Services> Section 70(2) of Cr.P.C reads as follows:-



"70(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it until it is executed."

6.Further, a perusal of the order, which has been produced by the petitioner, would show that this Court had dealt with the same issue and had held at paras 8 and 9 as follows:-

8..... I hasten to add that the courts can impose certain conditions, but it should not be harsh or conditions should not be to terrorise the accused.....

9. Court must protect the rights of the accused. But, at the same time, the court has to see that the offenders are prosecuted. This legal philosophy could be seen as a current judicial thing, (SANJAY CHANDRA VS. C.B.I [2012(1) SCC 40] also known as 2G scam case. While striking a balance between these two extremes, cause of justice cannot be compromised. Now the fear of the petitioner is that as and when he shows his face, there is possibility of he being sent to jail. When he files recall petition, it is an indication that he will participate in the court proceedings. At the same time, there is fear of psychosis on the prosecution that the accused may put bottle necks in the administration of criminal justice. Now the law is very clear. Accused cannot be asked to present in court as a condition precedent to recall the NBW."

7.Further, it is seen that the fear of the petitioner is that when he shows his face and appears before the Court to recall its warrant, there is possibility of he being sent to jail. Therefore, when he filed recall petition, it is an indication that he will undertake and participate in the Court proceedings. Therefore, the accused cannot be asked to be present in Court as a condition precedent of recalling non-bailable warrant. The only point that has to be borne in mind is that the accused should not abscond in future and he should extend his cooperation for the disposal of such criminal case.

8.Taking into consideration of the above position of law, this Court is in full agreement with the submission of the learned counsel for the petitioner. Hence, the Criminal Revision Cases are allowed and the orders passed by the learned Judicial Magistrate No.II, Kumbakonam in CrI.M.P.Nos.3392 and 3393 of 2019 dated 07.05.2019 are set aside and non-bailable warrant issued against the petitioner on 12.02.2019 stand recalled. The petitioner is directed to give an undertaking before the learned Judicial Magistrate No.II, Kumbakonam that he will extend his fullest cooperation to ensure that the STC Nos.450 and 460 of 2018 are disposed of without any



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No.69, Town High School Road,

petitioner is noticed, the trial Court is at liberty to proceed against the petitioner as it deems fit in accordance with law.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Judicial Magistrate No.II, Kumbakonam.

2. The Chif Judicial Magistrate,
Tanjore at Kumbakonam

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-89232[F] dated
25/09/2019)

+2 CC to MR.T.LENIN KUMAR, Advocate SR-89124,89125

**COMMON ORDER MADE IN
Crl.R.C. (MD) Nos.363 and 364 of 2019
Dated:-24.09.2019**

skn

MK (18.10.2019) 4P 6C