



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:19.08.2019

CORAM

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.RC(MD)Nos.453,454, 468,469 and 470 of 2019

1. Muniyandi @ Daniel S/o.Subbiah, Ilavankulam, Sankarankovil Taluk, Tirunelveli District.
... Petitioner(s) in CRL RC(MD). 453/ 2019
1. Muniyandi @ Daniel S/o.Subbiah, Ilavankulam, Sankarankovil Taluk, Tirunelveli District
... Petitioner(s) in CRL RC(MD). 454/ 2019
1. Muniyandi Alias Daniel S/o.Subbiah, Ilavankulam, Sankarankovil Taluk, Tirunelveli District
... Petitioner(s) in CRL RC(MD). 468/ 2019
1. Muniyandi Alias Daniel S/o.Subbiah, Ilavankulam, Sankarankovil Taluk, Tirunelveli District.
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1. Muniyandi Alias Daniel S/o.Subbiah, Ilavankulam, Sankarankovil Taluk, Tirunelveli District.
... Petitioner(s) in CRL RC(MD). 470/ 2019
- Vs. -
1. The Inspector Of police Panavadalichathiram Police Station, Tirunelveli District (Cr.No.79/2017)
... Respondent(s) in CRL RC(MD). 453/ 2019
1. The Inspector of Police Sankarankovil Town Police Station, Tirunelveli District (Cr.No.554/2012)
... Respondent(s) in CRL RC(MD). 454/ 2019
1. The Inspector of Police Chinnakovilankulam Police Station, Tirunelveli District (Cr.No.152/2011)
... Respondent(s) in CRL RC(MD). 468/ 2019
1. The Inspector of Police Sankarankovil Town Police Station, Tirunelveli District (Cr.No.555/2011)
... Respondent(s) in CRL RC(MD). 469/ 2019



1. The Sub Inspector of Police Sankarankovil Town Police Station,
Tirunelveli District (Cr.No.496/2011)
... Respondent(s) in CRL RC(MD). 470/ 2019

Prayer in Crl.RC(MD)No.453 of 2019: Criminal Revision has been filed against the order, dated 12.06.2019 made in Crl.M.P.No.3508 of 2019 in PRC No.26 of 2018 on the file of the Judicial Magistrate, Sankarankovil.

Prayer in Crl.RC(MD)No.454 of 2019: Criminal Revision has been filed against the order, dated 12.06.2019 made in Crl.M.P.No.3511 of 2019 in CC No.1159 of 2014 on the file of the Judicial Magistrate, Sankarankovil.

Prayer in Crl.RC(MD)No.468 of 2019: Criminal Revision has been filed against the order, dated 12.06.2019 made in Crl.M.P.No.3514 of 2019 in CC No.466 of 2011 on the file of the Judicial Magistrate, Sankarankovil.

Prayer in Crl.RC(MD)No.469 of 2019: Criminal Revision has been filed against the order, dated 12.06.2019 made in Crl.M.P.No.3510 of 2019 in CC No.1160 of 2014 on the file of the Judicial Magistrate, Sankarankovil.

Prayer in Crl.RC(MD)No.470 of 2019: Criminal Revision has been filed against the order, dated 12.06.2019 made in Crl.M.P.No.3512 of 2019 in CC No.169 of 2012 on the file of the Judicial Magistrate, Sankarankovil.

For Petitioner : Mr..M.Ramu

For Respondent : Mr.APG Ohm Chairma Prabhu
Government Advocate
(Criminal side)

COMMON ORDER

These Criminal Revisions have been filed against the NBW issued by the Judicial Magistrate, Sankarankovil.

2.It is seen that five criminal cases are pending against the petitioners and due to non-appearance of the petitioners in all the cases, NBW was issued as against the petitioners. The petitioner filed petitions under Section 70(2) Cr.P.C to recall the warrant without insisting him. However, the learned Judicial Magistrate dismissed the petitions filed by the petitioner. Aggrieved by the order of the learned Judicial Magistrate, Sankarankovil, the petitioner is before this court by way of filing these criminal revisions.

3.The learned counsel appearing for the petitioner submitted that the criminal proceedings of the Judicial Magistrate has been



stayed by this court and this court found the batch of cases registered against the petitioner of vengeance motive of the respondent police, which are civil in nature and that though the learned Judicial Magistrate aware of the order of this court, issued NBW and the Hon'ble Apex court held that the Judicial Magistrate cannot issue NBW on routine manner without application of mind. In support of his contention, the learned counsel appearing for the petitioner submitted the following decisions:-

(1) 2017-1-LW.(Cr1.)550 (Felix Suresh Peter Vs. The Inspector of Police, Peraiyur Police Station, Madurai District and another.

(2) 2017-1-LW(Cr1.)897 (Dr.Zubaida Begam Vs. State represented by the Inspector of Police, Kancheepuram);

(3) (2017)4 MLJ (Cr1) 309 (Ramalingam Vs. S.Subramanian and another);

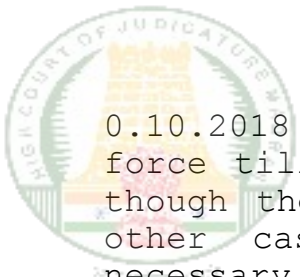
(4) Unreported decision of this court made in Cr1.RC(MD)No.538 of 2016, dated 18.08.2016 (Dr.P.Saravanan Vs. The Inspector of Police, City Crime Branch, Madurai, Madurai City).

4.The learned Government Advocate (Criminal side) appearing for the respondent submitted that the trial court has dismissed the recall petitions filed by the petitioners on the ground that there are several cases are pending against the petitioner and in all the cases, NBW was issued and the same is pending for several years and the petitioner has not chosen to appear at any point of time and he simply stated that he could not appear because of his ill health without producing any medical certificates and hence, the orders of the court below does not warrant interference by this court and prays for dismissal of the criminal revisions.

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

6.It is seen from the records that criminal cases have been filed in C.C.No.1159 of 2014, 169 of 2012, 466 of 2011, 1160 of 2014 and in PRC No.26 of 2018 against the petitioner and they are pending before the Judicial Magistrate, Sankarankovil. The learned Judicial Magistrate issued NBW for non-appearance of the petitioner. The petitioner moved the trial court by way of filing petitions under Section 17(2) Cr.P.C, which were dismissed by the trial court.

7.It is also seen from the records that the petitioner filed a petition before this court in Cr.OP(MD)No.14844 of 2018 and this court dispensed with the appearance of the petitioner on 23.08.2018 and in other cases, stay was granted by this court



0.10.2018 and subsequently it was extended and the stay was in force till today. It is revealed that no stay was in force, even though the High court ordered dispensation in one case and the other cases the appearance of the petitioner is very much necessary.

8. In the unreported decision of this court made in ***Cr1.RC (MD) No.538 of 2016, dated 18.08.2016 (Dr.P.Saravanan Vs. The Inspector of Police, City Crime Branch, Madurai, Madurai City)***, this court held as follows:-

"32. In the present case investigation was over. Cognizance was taken. The case is at the stage of securing the presence/attendance of the petitioner. Only with a view to secure his presence the learned Magistrate has issued NBW as against the petitioner. First he has ordered issuance of NBW. Then he has changed his mind and issued summons to the accused. No material to show that the summons was served upon him or attempted to be served upon him or he has refused to receive it. After having issued summons, on perusing the common order of this court under which his anticipatory bail petition was dismissed, suo moto, the learned Magistrate has ordered NBW as against the petitioner. None of the criteria contemplated in Section 87(a) or (b) Cr.P.C. has been satisfied. No such contingency in this case at all. Here we shall recall the guidance provided by the Hon'ble Supreme court in *INDER MOHAN GOSWAMI (Supra)*. Thus, in the facts and circumstances of this case, exercise of judicial discretion by the Magistrate in issuing NBW to the petitioner is not proper.

9. In the judgment reported in ***2017-1-LW.(Cr1.) 550 (Felix Suresh Peter Vs. The Inspector of Police, Peraiyur Police Station, Madurai District and another)***, this court has held as follows:-

14. Issuance of non bailable warrant involves arrest, imprisonment, consequent deprivation of liberty and therefore, the courts have to be extremely careful before issuing non bailable warrant. Without scrutiny of the entire facts and circumstances of the case and complete application of mind, the court should not exercise the discretion in favour of issuing non bailable warrant. The court must decide whether issuance of non bailable warrant is the only way to get the presence of the accused. When there is no intentional non appearance of the accused, the court can either issue summons or bailable warrant or issue instructions to the accused through pleader asking for the appearance before the



10. Coming to the facts of the cases, the petitioner is no fleeing away of the petitioner from the justice. Under such circumstances, the court should have been lenient in allowing the petition filed under Section 70(2) Cr.P.C for recalling the warrant. When the lawful process has been resorted to by the accused explaining the circumstances under which he was unable to appear and more especially when his appearance on that date was not indispensable, the issuance of Non-Bailable Warrant is not justified.

11. Under such circumstances, the impugned orders passed by the Judicial Magistrate, Sankarankovil are set aside. Accordingly, these revisions are allowed on the following conditions:-

(1) The petitioner shall surrender before the learned Judicial Magistrate, Sankarankovil, within a period of one week from the date of receipt of a copy of this order. The respondent police shall not arrest the petitioner till such time;

(2) On such surrender, the learned Magistrate will recall the NBW;

(3) There shall be two sureties, they and the petitioner shall execute a bond of Rs.20,000/- each to the satisfaction of the said Magistrate; and

(4) The petitioner shall regularly attend on all the hearing dates, unless his absence is condoned on a petition filed by him.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)

TO

1. The Judicial Magistrate,
Sankarankovil.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
3. The Inspector of Police
Sankarankovil Town Police Station,
Tirunelveli District



4. The Inspector of Police
Chinnakovilankulam Police Station,
Tirunelveli District

5. The Inspector Of police
Panavadalichathiram Police Station,
Tirunelveli District

+1CC TO MR. M.RAMU, Advocate Sr. No. 82262

Crl.RC (MD) Nos.453,454, 468,469 and 470 of 2019
19.08.2019

mr(CO)

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