

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CrI.OP.No.4041 of 2020

Sandipan Chakravorthy

.. Petitioner/Accused

-Vs-

The Tamil Nadu State
Rep.by

Deputy Director of Industrial Safety and Health,
6.Lalbhadur Sasthri Street,
Periyakuppam,
Thiruvallur-602001.

... Respondent/Complainant

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to direct the Chief Judicial Magistrate, Tiruvallur to entertain the petition to recall the warrant under Section 70(2) of the Cr.P.C filed by the petitioner on 07.02.2020 in SR.No.410 of 2020 in STC.No.126 of 2017.

For Petitioner : Mr.V.Karthick, Senior Counsel
for M/s.T.S.Gopalan and Co

For Respondent :Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed by the accused to direct the Chief Judicial Magistrate, Tiruvallur to entertain the petition to re-call the warrant under Section 70(2) of Cr.P.C vide SR.No.410 of 2020 in STC.No.126 of 2017 and dispose of the same in accordance with law.

2. Mr.V.Karthick, the learned Senior Counsel for the petitioner has submitted that the petitioner was one of the Directors of Tata Steel Processing and Distribution Limited, the petitioner was also nominated as the Occupier of the said Factory in terms of Section 2(m) of the Factories Act. He

further submitted that the petitioner was retired from the Directorship of the aforesaid factory on 30.09.2014 itself, but, thereafter, the respondent herein has filed a private complaint stating that the said company has violated certain provisions of Factories Act and based on the same, the learned Chief Judicial Magistrate, Tiruvallur has taken the case on file in STC.No.126 of 2017 and issued summons. He further submitted that eventhough the summons was not served on the petitioner, on 06.06.2019, the learned Chief Judicial Magistrate, Tiruvallur has issued bailable warrant and thereafter on 13.11.2019, he converted the same into non-bailable warrant. He further submitted that since the petitioner has already retired from the post of Directorship of the aforesaid company, he filed CrI.OP.No.33715 of 2019 before this Court to quash the proceedings against him and the same is pending. He further submitted that the petitioner has filed an application under Section 70(2) of Cr.P.C before the trial court on 08.01.2020 to re-call the said warrant, but the learned Chief Judicial Magistrate, Tiruvallur, has returned the said application stating that since proclamation warrant was issued against the petitioner and the same is pending, the said petition is not maintainable. He further submitted that without serving the summons, the trial court has issued bailable warrant and subsequently, it was converted into non-bailable warrant and thereafter, passed an order that the petitioner as a 'proclaimed offender'. He further submitted that as per Section 82(1) of Cr.P.C, if the court finds that the accused has absconded or is concealing himself so that such warrant cannot be executed, it may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation. He further submitted that without following the said procedure, the trial court has ordered directly that the petitioner as a 'proclaimed offender'. He further submitted that as per Sub Section (4) of Section 82 of Cr.P.C., where a proclamation published under sub-section (1) in respect of a person accused of an offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of IPC and such person failed to appear at the specified place and time required by the proclamation, the court may after making such inquiry, as it thinks fit, pronounced him as proclaimed offender and make a declaration to that effect. He further submitted that the very purpose of issuing proclamation is to bring to the notice of the accused that his appearance is necessary in the particular case. He further submitted that in this case, since the accused has voluntarily filed a petition subjecting himself for the process of law, the trial court ought to have entertain the petition and pass order in accordance with

law and hence, he prayed to allow this petition.

3. The learned Additional Public Prosecutor has fairly conceded that only after issuing written proclamation under Section 83(1) of Cr.P.C the trial court can declare that the accused as a proclaimed offender by invoking the powers under Section 83(4) of Cr.P.C., and therefore, he submitted that he is leaving it to the discretion of the court.

4. The Case details which was uploaded through website has been produced. A perusal of the same shows that it was adjourned upto 18.09.2019 as issue of service. The adjudication dated 04.10.2019 shows that the complainant present and filed a status report seeking for execution of bailable warrant and the same was recorded and adjourned to 13.11.2019 for further proceedings. On 13.11.2019, the trial court has suddenly recorded as non bailable warrant pending and at the request of the complainant, the case was adjourned to 02.01.2020. On 08.01.2020, it was recorded as report filed by the complainant along with non-bailable warrant. Further it was recorded as accused wantonly evading the execution of non-bailable warrant and hence accused declared as proclaimed offender and issue proclamation warrant against him under Section 82 of Cr.P.C.

5. At this juncture, it would be relevant to refer to Section 82 of Cr.P.C which reads as follows:

" 82.Proclamation for person absconding.- (1) if any court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows;-

(i)(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the court-house;

(ii) the court may also, if it thinks fit,

direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause(i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

[(4) where a proclamation published under Sub-section (1) is in respect of person accused of an offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of IPC and such person fails to appear at the specified place and time required by the proclamation, the court may after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect,

(5) The provisions of sub-sections(2) and (3) shall apply to a declaration made by the court under sub-section (4) as they apply to the proclamation published under sub-section (1)]”

6. A reading of the aforesaid provisions shows that if any court has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, it may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation. Therefore, as per Sub Section (1) of Section 82 of Cr.P.C, initially the said court can issue proclamation directing the accused to appear at specified place and at a specified time. As per Sub Section (4) of Section 82 of Cr.P.C where a proclamation published under Sub-section (1) is in respect of person accused of an offence punishable under Sections 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of IPC and such person fails to appear at the specified place and time required by the proclamation, the court may after making such inquiry as it thinks fit, pronounce him as a 'proclaimed offender' and make a declaration to that effect.

7. In this case, admittedly, no such proclamation has been made as per Sub Section (1) of Section 82 of Cr.P.C. Further, only in respect of the offences under IPC which are mentioned under Sub Section (4) of Section 82 of Cr.P.C., alone, the court

can declare the accused as proclaimed offender. But, in this case, the petitioner is facing trial for the alleged offences under the Factories Act. Under the said circumstances, the Magistrate should not have passed an order under Sub Section 4 of Section 82 of Cr.P.C declaring the petitioner as 'proclaimed offender'.

8. Further, the purpose of issuing proclamation and declaring the offender as proclaimed offender is only to bring to the knowledge of the concerned person (accused) that a criminal case is pending against him. Once he got knowledge and appeared before the court, the court has to pass an order either allowing the petition to re-call the warrant or dismissing the same and remand the accused and it is open to the accused to file bail application. Instead of following the said procedure, the trial court has returned the petition to re-call the warrant as already proclaimed warrant has been issued. The said order is not sustainable and the same is set aside.

9. The learned Senior Counsel for the petitioner has further submitted that the petitioner has filed petition to recall the NBW without surrendering himself before the trial court. The trial court has not returned the petition on that ground. Hence this court is not expressing any view with regard to whether petitioner should surrender before the trial court or not at the time of filing petition under Section 70(2) of Cr.P.C.,

10. For the aforesaid reasons, this Criminal original petition is allowed. The petitioner is directed to re-present the petition to recall the NBW and on such re-representation of the said petition, the trial court has to entertain the said application and dispose of the same in accordance with law.

-s/d-

सत्यमेव जयते Assistant Registrar

True Copy

Sub-Assistant Registrar

vv
To

1. The Chief Judicial Magistrate,
Tiruvallur

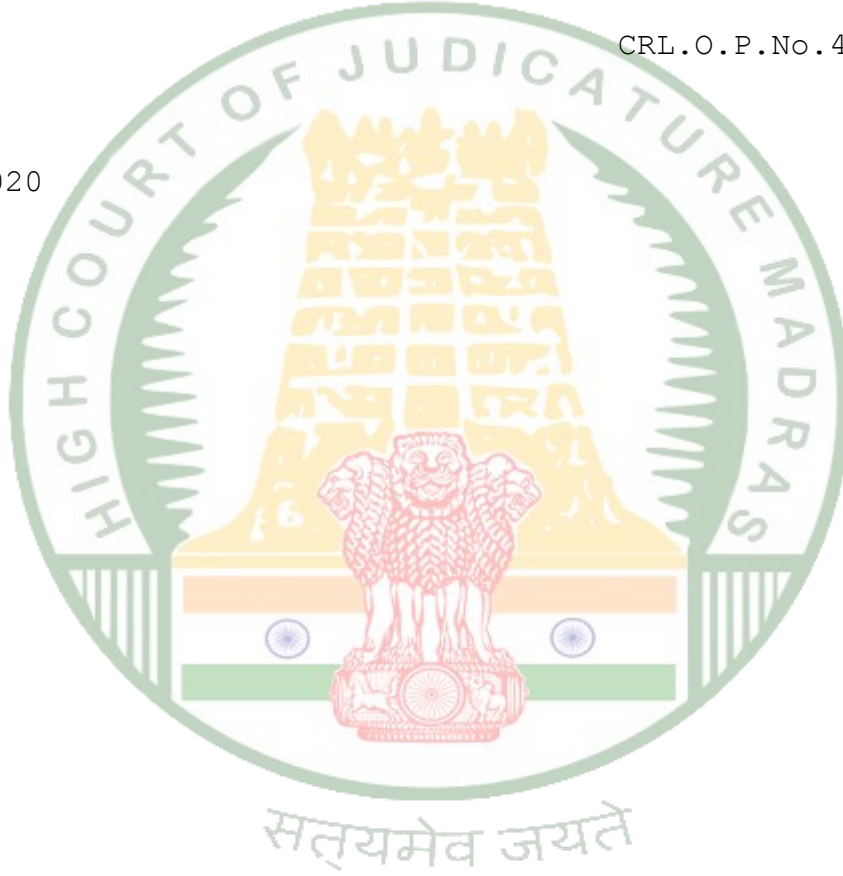
2. The Deputy Director of Industrial Safety and Health,
6.Lalbhadrur Sasthri Street,
Periyakuppam,
Thiruvallur-602 001.

3. The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.T.S.Gopalan & Co sr15503

CRL.O.P.No.4041 Of 2020

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