

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

Crl.OP.No.4261 of 2020

1.R.Sundaravadivelu
2.S.Vanaja

.. Petitioners

-vs-

State by Rep
The Inspector of Police,
W-22, All Women Police Station,
Mylapore, Chennai - 600 004.

.. Respondent

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to set aside the order dated 06.02.2020 by the learned XVIII Metropolitan Magistrate by dismissing the petition filed in Crl.M.P.No.695 of 2020 under Section 317 Cr.P.C and issuing non bailable warrant against the petitioners in the case pending trial in CC.No.5245 of 2017 on the file of the learned XVIII Metropolitan Magistrate, Saidapet and cancel the non-bailable warrant.

For Petitioners : Mr.C.Vidhusan
for M/s.K.Ramani

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

ORDER

This Criminal Original Petition has been filed by the Accused Nos.2 and 3 to set aside the order passed by the XVIII Metropolitan Magistrate in Crl.MP.No.695 of 2020 and recall NBW issued against the petitioners in CC.No.5245 of 2017.

2. The learned counsel for the petitioners has submitted that the petitioners are facing trial for the alleged offence under Sections 498(A) and 406 of IPC. He further submitted that the petitioners herein have filed Crl.OP.No.17816 of 2017 before this Court to quash the proceedings against them in CC.No.5245 of 2017 on the file of the XVIII Metropolitan Magistrate,

Saidapet, Chennai. This Court, by the order dated 27.04.2019 has dismissed the said petition on the ground that already PW.1 was examined, however the personal appearance of the petitioners was dispensed with and also directed the petitioners that they have to appear before the Trial Court at the time of furnishing of copies, framing issues, questioning under Section 313 Cr.P.C and at the time of passing judgment and in other hearings, the petitioners were permitted to file petition before the Trial Court through their counsel to dispense with the personal appearance. He further submitted that based on the aforesaid liberty given by this Court, the petitioners have filed petition under Section 317 Cr.P.C stating the reason that the petitioners were called by the Chief Minister of Orissa for giving lecture and hence they were not able to appear before the Trial court. But, without considering the said fact, the Trial Court has dismissed the said petition. He further submitted that apart from filing petition under Section 317 Cr.P.C., the petitioner's counsel by abundant precaution has filed another petition under Section 309 Cr.P.C to adjourn the matter. The learned Trial Court has dismissed the said petition also stating that the petitioners have not stated any valid reasons. He further submitted that after dismissing the said petitions, the Trial Court has issued NBW against the petitioners herein. He further submitted that since this Court has already granted liberty to the petitioners that they can appear before the Trial Court through counsel by filing petition, it would not be proper for the Trial Court to dismiss the said petition and issued NBW. Therefore, he prayed to set aside the aforesaid order.

3. The learned Additional Public Prosecutor who is appearing for the respondent fairly conceded that while dismissing the CrI.OP.No.17861 of 2019, a liberty was given to the petitioners to appear before the Trial Court only at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C and at the time of passing judgment and on other occasions, they can file petition before the Trial Court through their counsel to dispense with their personal appearance and therefore he prayed to pass appropriate order.

4. A perusal of the order passed in CrI.OP.No.17861 of 2019 dated 27.04.2019 shows that the petitioners herein have filed the aforesaid petition to quash the proceedings against them in CC.No.5245 of 2017 and this Court while dismissing the said petition has observed that the personal appearance of the petitioners is dispensed with and they shall be represented by a counsel after filing appropriate application. However, it gave direction that the petitioners shall be present before the Court at the time of questioning, furnishing of copies and framing of charges questioning under Section 313 Cr.P.C and at the time of passing judgment. Admittedly on 06.02.2020, the case was not

posted for any of the aforesaid stages and it was posted for trial only. In view of the order passed by this Court in Crl.OP.No.17861 of 2019, the petitioners are entitled to file petition under Section 317 Cr.P.C through their counsel even without assigning any reason. If any such petition is filed on the occasions other than the aforesaid stages, the Trial Court is bound to allow this said application. In this case, on behalf of the petitioners, their counsel has filed an application under Section 317 Cr.P.C on 06.02.2020. In that petition, they have stated a reason that since the petitioners were invited by the Chief Minister of Orissa for meeting they could not appear. As already pointed out that since this Court gave a liberty to the petitioners to file petition under Section 317 Cr.P.C the Trial Court should not have dismissed the said petition. Hence the order passed by the learned Trial Court dismissing the petition which was filed under Section 317 Cr.P.C is set aside and consequently the issuance of NBW is also set aside. The concerned Magistrate is directed to recall the Non-Bailable Warrant and proceed further in the aforesaid case in accordance with law.

5. With the aforesaid directions, this Criminal Original Petition is disposed of.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

drl

To

1. The Metropolitan Magistrate No.XVIII,
Saidapet, Chennai.

2.The Inspector of Police,
W-22, All Women Police Station,
Mylapore, Chennai - 600 004.

3. The Public Prosecutor, Puducherry.

+3ccs to Mr.C.Palanichamy, Advocate, SR.No.16273.

CRL.O.P.No.4261 of 2020

NM(CO)
CSR: 04.03.2020