



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2020

CORAM

THE HONOURABLE **MRS.JUSTICE J.NISHA BANU**

Crl.O.P.(MD)No.14185 of 2020

1.P.Anbalagan

2.Mathialagan

... Petitioners/Accused Nos.2&8

Vs.

State through

The Inspector of Police,

Manamadurai Police Station,

Sivagangai District.

(In Crime No.317 of 2009)

... Respondents

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C., to direct the learned Additional District Munsif cum Judicial Magistrate, Manamadurai to consider the petitioners warrant recall application, non-bailable warrant dated 27.08.2014, on the same day they surrender in P.R.C.No.4 of 2010 on its file.

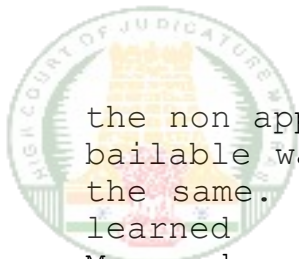
For Petitioners : Mr.V.Kathirvelu,
Senior Counsel,
for M/S.K.Prabhu

For Respondent : Mr.V.Neelakandan,
Additional Public Prosecutor.

ORDER

This criminal original petition has been filed to direct the learned Additional District Munsif cum Judicial Magistrate, Manamadurai to consider the petitioners' application to recall the non-bailable warrant, dated 27.08.2014 issued in P.R.C.No.4 of 2010, on the same day of surrender.

2.The learned senior counsel appearing for the petitioner would submit that the defacto complainant preferred a false complaint alleging that due to political rivalry, the petitioners herein assaulted him and caused simple injuries. He would further submit that the respondent Police based on the aforesaid complaint, registered a case in crime No.317 of 2009 as against the petitioners for the offences punishable under Sections 147, 148, 323, 324, 506(ii) IPC and Section 3 of the Tamilnadu Public Property (Prevention of Damage and Loss) Act and after investigation, filed a final report in P.R.C.No.4 of 2010 before the learned Additional District Munsif cum Judicial Magistrate, Manamadurai. He would further submit that the petitioners appeared before the trial Court regularly. However, on 27.08.2014, due to their old age and ill health, they could not appear before the trial Court. In view of



the non appearance of the petitioners, the Court below issued a non-bailable warrant on 27.08.2014 and now only they came to know about the same. Hence, the petitioners filed this petition to direct the learned Additional District Munsif cum Judicial Magistrate, Manamadurai to consider the warrant recall application of the petitioners in P.R.C.No.4 of 2010 on the same day of surrender. The learned counsel appearing for the petitioners undertakes that the petitioners will appear before the Court below regularly on all future hearing dates without fail.

3.Heard the learned counsel for the petitioners as well as the learned Additional Public Prosecutor for the respondent.

4.The case is of the year 2010 and the warrant has been issued as early as on 27.08.2014 and the petitioners are aged 75 and 58 years respectively. It is the contention of the petitioners that due to old age and ill-health, they could not appear before the trial Court. In the judgement reported in **(2007) 2 MLJ (Crl) 1668, Sirugudugu Naga Venkata Durgakumari and others Vs. Surugudu Jhansilakshmi**, this Court has held that very physical presence of the petitioners or surrender before the Court is not necessary for filing the petition under Section 70(2) to recall the non-bailable warrant. Considering the age of the petitioners, the learned Additional District Munsif cum Judicial Magistrate, Manamadurai, shall consider the recall warrant petition of the petitioners sympathetically without insisting their presence and pass orders in accordance with law on the same day. Considering the facts and circumstances of the case, there shall be a direction to the learned Additional District Munsif cum Judicial Magistrate, Manamadurai, to dispose of the case in PRC.No.4 of 2010 within a period of three months from the date of receipt of a copy of this order.

5.With the above direction, this criminal original petition is disposed of.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gns

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Additional District Munsif cum Judicial Magistrate,
Manamadurai.

2.The Inspector of Police,
Manamadurai Police Station,
Sivagangai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K.Prabhu ,Advocate,in SR.No.24327.

Crl.O.P. (MD) No.14185 of 2020
07.12.2020

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