



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2020

CORAM

WEB COPY

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

Crl.O.P. (MD) No.13430 of 2020

Kamaraj

... Petitioner/Accused

Vs.

State represented by
The Sub Inspector of Police,
Palugal Police Station,
Kanyakumari District.

... Respondent/Complainant

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C., to direct the learned Judicial Magistrate-I, Kuzhithurai, Kanyakumari District to recall the warrant issued against the petitioner in C.C.No.26 of 2016 dated 30.09.2020, without insisting physical presence of the petitioner.

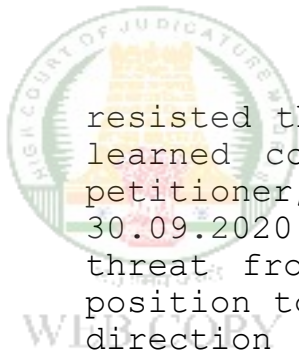
For Petitioner : Mr.M.Anandaraaj

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

ORDER

This criminal original petition has been filed to direct the learned Judicial Magistrate-I, Kuzhithurai, Kanyakumari District to recall the warrant issued against the petitioner in C.C.No.26 of 2016 dated 30.09.2020, without insisting physical presence of the petitioner.

2.The learned counsel appearing for the petitioner would submit that due to some dispute, the defacto complainant, who is the practicing Advocate, preferred a complaint against the petitioner and two other persons. Based on the complaint, the respondent police registered a case in crime No.108 of 2011 for the offences punishable under Sections 294(b), 323 and 506(ii) IPC. He would further submit that the respondent police, after completion of investigation, filed a charge sheet in C.C.No.26 of 2016 before the learned Judicial Magistrate-I, Kuzhithurai. The defacto complainant being an Advocate attached to the local Bar Association of Kuzhithurai, prevented other Advocates from appearing on behalf of the petitioner and whenever the petitioner tried to appear before the trial Court, the defacto complainant making panic situation



resisted the petitioner from appearing before the trial Court. The learned counsel would submit that due to non appearance of the petitioner, the trial Court issued a Non-Bailable Warrant on 30.09.2020. The grievance of the petitioner is that due to the threat from the defacto complainant, the petitioner is not in a position to appear before the trial Court and hence, he prayed for a direction to the learned Judicial Magistrate-I, Kuzhithurai, Kanyakumari District to recall the warrant issued against the petitioner in C.C.No.26 of 2016 dated 30.09.2020, without insisting physical presence of the petitioner.

3.In support of his contention, the learned counsel relied upon a decision reported in **(2007) 2 MLJ (Crl)1668** in a case of **Sirugudugu Naga Venkata Durgakumari and others Vs. Sirugudu Jhansilakshmi** wherein it has been held that the petitioner's surrender or appearance before the Court below is not necessary for filing the petition to recall the non-bailable warrant. The learned counsel for the petitioner also relied upon the decision of this Court in Crl.O.P.No.17104 of 2011 wherein this Court has held that the trial Court need not insist upon the very physical presence of the accused/petitioner for the purpose of recalling the non-bailable warrant and further directed the Court below to pass orders in the recall petition on the same day.

4.Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor for the respondent.

5.Considering the facts and circumstances of the case and considering the decisions cited supra, this Court is inclined to direct the learned Judicial Magistrate-I, Kuzhithurai, Kanyakumari District, to consider the recall warrant petition to be filed by the petitioner in C.C.No.26 of 2016, without insisting his physical appearance, within a period of two weeks from the date of receipt of a copy of this order.

6.With the above direction, this criminal original petition is allowed.

Sd/-

Assistant Registrar

// 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,
<https://hcservices.ecourts.gov.in/hcservices/>



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 Judicial Magistrate-I,
Kuzhithurai, Kanyakumari District
- 2.The Sub Inspector of Police,
Palugal Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.Anandaraj, Advocate Sr.No.24710

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