



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2020

CORAM

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

Crl.O.P. (MD)No.15072 of 2020

C.Kannan

... Petitioner/Sole Accused

Vs.

1.The Inspector of Police,
Thiruverumber Police Station, Trichy City.

2.The Inspector of Police,
Ponmalai Police Station,
Trichy City.

...Respondents No 1 & 2

3.R.Jothivanan

... Respondent No 3/Complainant

Prayer : Criminal Original Petition filed under Section 482 Criminal Procedure Code to direct the learned Judicial Magistrate No.IV, Trichy to consider the warrant recall petition under Section 70(2) of Criminal Procedure Code, to be filed by the petitioner in STC.No.746 of 2013, on the file of the learned Judicial Magistrate No.IV, Trichy on the same day without insisting the petitioner's appearance.

For Petitioner
For R1

: Mr.T.A.Ebenezer
: Mr.V.Neelakandan,
Additional Public Prosecutor.

ORDER

This criminal original petition has been filed to direct the learned Judicial Magistrate No.IV, Trichy to consider the warrant recall petition under Section 70(2) of Cr.P.C., to be filed by the petitioner in STC.No.746 of 2013, on the file of the learned Judicial Magistrate No.IV, Trichy on the same day without insisting the petitioner's appearance.

2.The learned counsel appearing for the petitioner would submit that no summon has been received by the petitioner. However, non-bailable warrant has been issued against the petitioner. He would further submit that the said absence is neither willful nor wanton. Hence, the petition.

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 2013 and the warrant has been issued as early as on 10.01.2020 and the petitioner is aged 63 years. It is the submission of the petitioner that due to old age and ill-



health, he could not appear before the trial Court. In the judgement reported in (2007) 2 MLJ (CrI) 1668, **Sirugudugu Naga Venkata Durgakumari and others Vs. Sirugudu 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 petitioner, the learned Judicial Magistrate No.IV, Trichy, shall consider the recall warrant petition of the petitioner sympathetically without insisting his 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 Judicial Magistrate No.IV, Trichy, to dispose of the case in STC.No.746 of 2013 within a period of three months from the date of receipt of a copy of this order.

5.This criminal original petition is allowed, on these terms.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

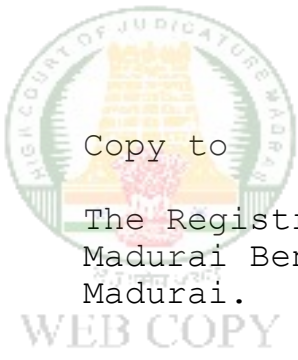
Sub Assistant Registrar(CS)

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 Judicial Magistrate No.IV,
Trichy.
- 2.The Inspector of Police,
Thiruverumber Police Station, Trichy City.
- 3.The Inspector of Police,
Ponmalai Police Station, Trichy City.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Copy to

The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

CrI.O.P. (MD) No.15072 of 2020
17.12.2020

ES (CO)
KB (12.02.2021) 3P 6C