



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2020

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Crl.O.P.(MD)No.15105 of 2020

WEB COPY

C.Kannan

... Petitioner

vs.

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

2.M.Radha Krishnan

... Respondents

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C., to direct the learned Judicial Magistrate No.VI, Trichy to consider the warrant recall petition under Section 70(2) of Cr.P.C., to be filed by the petitioner in C.C.No.1640 of 2019, on the file of the learned Judicial Magistrate No.VI, Trichy on the same day without insisting the petitioner's appearance.

For Petitioner

: Mr.T.A.Ebenezer

For R1

: Mr.V.Neelakandan,

Additional Public Prosecutor

ORDER

This criminal original petition has been filed to direct the learned Judicial Magistrate No.VI, Trichy to consider the warrant recall petition under Section 70(2) of Cr.P.C., to be filed by the petitioner in C.C.No.1640 of 2019, on the file of the learned Judicial Magistrate No.VI, Trichy, on the same day without insisting the petitioner's appearance.

2.The learned counsel for the petitioner would state that on the complaint of the 2nd respondent under Section 138 of the Negotiable Instrument Act, the above criminal case was filed against the petitioner. According to him, no summon was received by the petitioner to appear before the court, but non bailable warrant has been issued and based on the same, the 1st respondent/police is searching the petitioner. Thus, he would pray for a direction to the learned Magistrate to consider the recall warrant petition of the petitioner without insisting the appearance of the petitioner. In support of his contention, he would rely on the decisions in Crl.R.C.Nos.363 and 364 of 2019 dated 24.09.2019, R.R.Gopal Jee vs. M/s.Rajah Holdings and Crl.OP.No.6800 of 2020, dated 23.03.2020, Senthil vs. K.S.Raja.

3.In Crl.R.C.Nos.363 and 364 of 2019 dated 24.09.2019, <https://hsr.res.judiciary.gov.in/jee-services/> vs. M/s.Rajah Holdings, this Court has held as



follows:-

'Further, it is seen that the fear of the petitioner is that when he shows his face and appears before the Court to recall its warrant, there is possibility of he being sent to jail. Therefore, when he filed recall petition, it is an indication that he will undertake and participate in the Court proceedings. Therefore, the accused cannot be asked to be present in Court as a condition precedent of recalling non-bailable warrant. The only point that has to be borne in mind is that the accused should not abscond in future and he should extend his cooperation for the disposal of such criminal case.'

4.The case is of the year 2019 and the petitioner is aged 63 years. It is the contention of the petitioner that no summon has been received by him to appear before the court. In my considered opinion, the above decision is squarely applicable to the present facts and circumstances of the case. Considering the age of the petitioner, the learned Judicial Magistrate-VI, Trichy, shall consider the recall warrant petition of the petitioner without insisting his surrender and pass orders in accordance with law on the same day. The petitioner is directed to give an undertaking before the learned Magistrate that he will extend his fullest co-operation for disposal of the case without any delay. In case of non co-operation on the part of the petitioner, the learned Magistrate is at liberty to proceed against him in accordance with law.

5.With the above direction, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

bala/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.VI,
Trichy.
- 2.The Inspector of Police,
Ponmalai Police Station,
Trichy City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN

CrI.O.P. (MD)No.15105 of 2020

DATED : 18.12.2020

(VR)CO

AP(11/01/2021) 3P 4C