

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.02.2021

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

**Crl.R.C.No.73 of 2021 and
Crl.M.P.No.1293 of 2021**

C.Thangabalu ... Petitioner

.Vs.

State by
The Inspector of Police
Ethappur Police Station
Attur Taluk,
Salem District
Crime No.380/2016

... Respondent

PRAYER : Criminal Revision case filed under Section 401 of Cr.P.C. against the order passed by the III Additional District and Sessions Judge, Salem in Crl.M.P.No.7 of 2021 in S.C.No.72 of 2017 dated 5.1.2021.

For Petitioner : No appearance
For Respondent : Mr.K.Madhan (Crl.side)
Government Advocate

ORDER

This Criminal Revision has been filed against the order passed by the III Additional District and Sessions Judge, Salem in Crl.M.P.No.7 of 2021 in S.C.No.72 of 2017 dated 5.1.2021.

2. The petitioner herein is shown as second accused in Cr.No.380/2016 and after investigation charge sheet was filed before the learned Judicial Magistrate No.1, Attur and the same was committed by the learned Judicial Magistrate and was taken on file in S.C.No.76 of 2017, by the learned Principal District Judge, Salem and thereafter summons were issued to the petitioner. Since, summons could not be served on the petitioner and as it was pending for a long time, at request of the prosecution, the learned Judge issued Non Bailable warrant against the petitioner. Thereafter, the petitioner filed a petition under Section 70 (2) Cr.P.C., before the learned III Additional District Judge, Salem for recall of NBW. The said petition was dismissed by the learned Judge vide order dated 05.01.2021. Against the said order, the petitioner is before this Court.

3. No representation for the petitioner.

4.The learned Government Advocate (Crl.side) would submit that without appearing before the trial court, the petitioner directly approached this Court and got anticipatory bail, in which this Court directed the learned Principal District & Sessions Judge, Salem to dispose the surrender application filed by the petitioner on the same day on merits and the learned trial Judge also after considering the petition filed by the petitioner under Section 70 (2) Cr.P.C. dismissed and remanded him to Judicial custody. He would further submit that the first accused is the father of the petitioner and the second accused purposely evaded summons and the case is pending for three years and therefore the learned Judge dismissed the petition filed for recall of warrant. He would further submit that if he release on bail, there is possibility of absconding once again and the case would be pending for years together without any progress and therefore the revision liable to be dismissed.

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5. Heard the learned Government Advocate (Crl.side). Perused the records.

6. The petitioner is shown as A2 on the file of the learned III

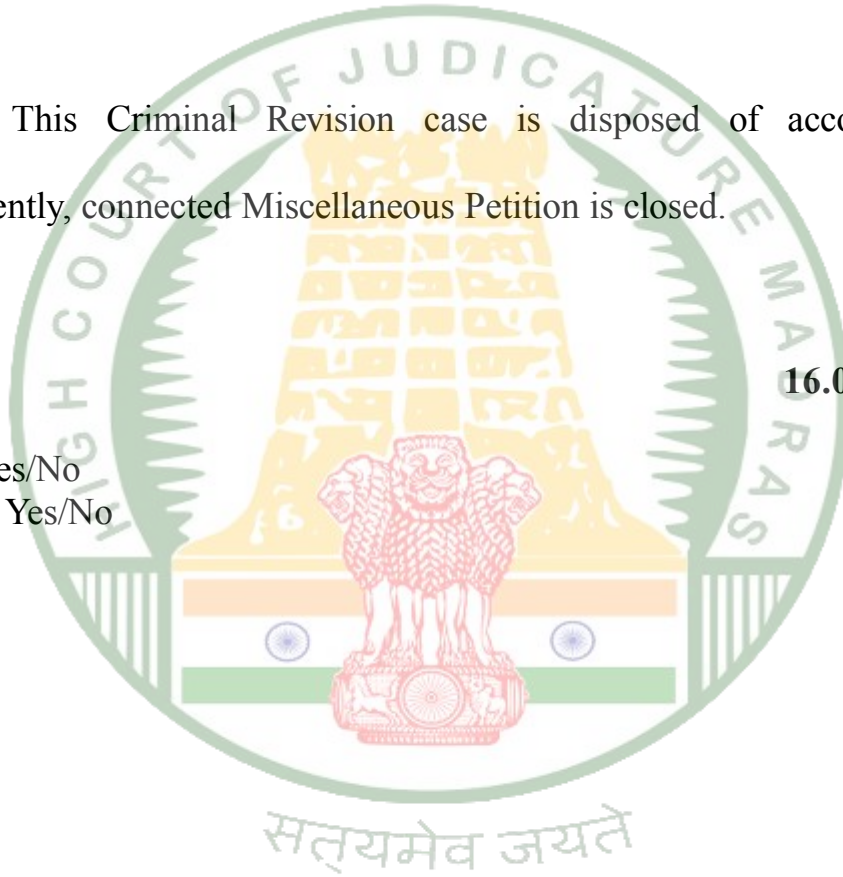
Additional District Judge, Salem and the Sessions Case is pending till date and right from 2017 till the end of 2020, the summons to the petitioner was not served. Further A1 is none other other than the father of the petitioner. Further, this petitioner evaded services of summons and therefore, NBW was issued. Thereafter he approached this Court on November 2020 and this Court by order dated 09.11.2020 had directed the learned Principal District and Sessions Judge to consider his application on merits on the same day itself. Thereafter the petitioner has filed the petition under Section 70(2) Cr.P.C. before the learned II Additional District Judge, Salem. The learned Judge on considering the fact that the case is pending from 2017 and the petitioner, if released on bail he may abscond and the learned Judge cannot frame charge against him and proceed further has rightly dismissed the petition filed under Section 70 (ii) Cr.P.C. Therefore, this Court does not find any infirmity or illegality in the order passed by the Court below. However, considering the facts and circumstances and the attitude of the petitioner and as the presence of the petitioner is essential before the Sessions Judge for framing of charge, the learned Sessions Judge is directed proceed with the trial. Since, the case is pending from 2017, the learned Judge is directed

to frame charge against the petitioner and proceed with the trial in accordance with law on day-to-day basis and complete the case, within a period of four months from the date of receipt of a copy of this order. However, it is made clear that no further extension will be granted.

7. This Criminal Revision case is disposed of accordingly, Consequently, connected Miscellaneous Petition is closed.

16.02.2021

Index : Yes/No
Internet : Yes/No
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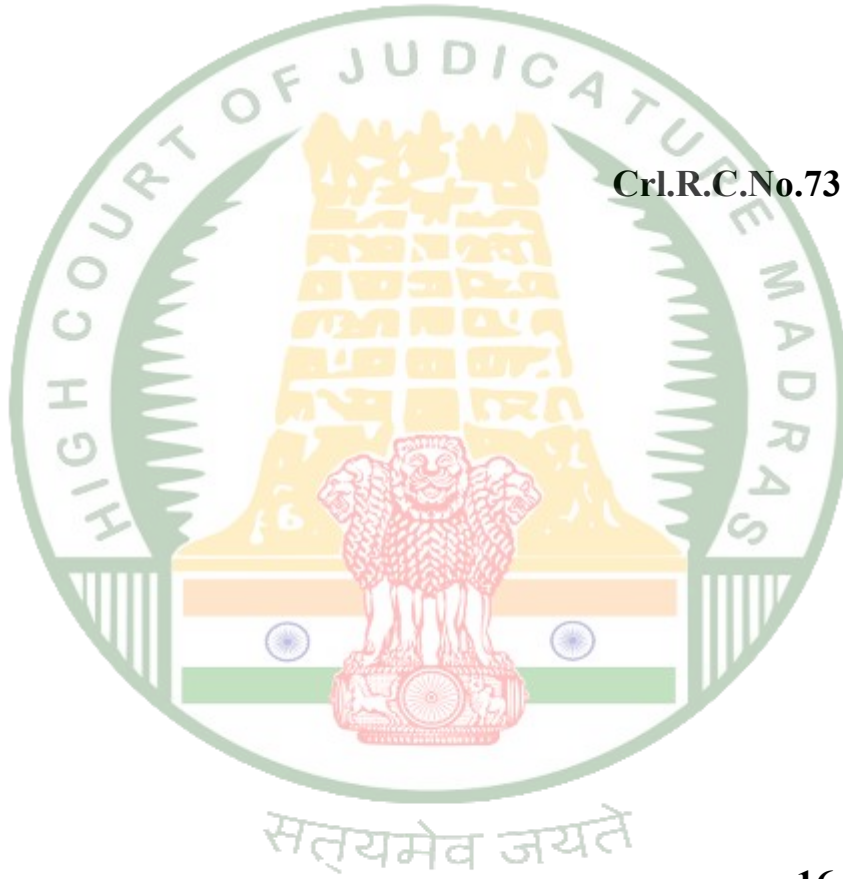
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P.VELMURUGAN, J
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Crl.R.C. No.73 of 2021

To

The Judicial Magistrate, Tambaram



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