

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.7038 OF 2021

Durai Srinivasan

...Petitioner/Sole Accused

Versus

Sree Gokulam Chit and Finance Company Pvt.Ltd.,
Rep.by its Business Manager and Law Officer
6/7, V.R.Complex Mothilal Street,
Tiruvallur Town and District.

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the learned Fast Track Judge (Magistrate Level) Tiruvallur to recall the non-bailable warrant issued against the petitioner in C.C.No.24 of 2014.

For Petitioner : Mr.S.Gowrishankar
For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to direct the learned Fast Track Judge (Magistrate Level) Tiruvallur to recall the non-bailable warrant issued against the petitioner in C.C.No.24 of 2014.

2. The petitioner, who is the sole accused in C.C.Nos.24, 27 & 34 of 2014 which are pending before the Fast Track Judge (Magistrate Level) Tiruvallur, had filed this petition seeking a direction to recall the Non-bailable Warrant issued against the petitioner in C.C.No.24 of 2014. NBW, which was issued on 30.12.2020.

3. The contention of the petitioner is that the petitioner is a aged person and he is very near to Arakonam. However, his appearance before the trial court was dispensed with and the Advocate has also not appeared before the trial

Court. He also submitted that quash petitions were filed before this Court in CrI.O.P.Nos.19312 to 19314 of 2014. This Court by the order dated 12.12.2020 has disposed of the Criminal Original Petitions to quash and dispensed with the appearance of the accused. On 30.12.2020, the complainant was absent before the trial court and petition under Section 256 of Cr.P.C., was filed and allowed. Appearance of the accused dispensed with. No representation on behalf of him. As per the order dated 12.12.2020, this Court directed to expedite the trial and complete the same as early as possible and also ordered that the order will not stand on the way of the trial Court to insist for the appearance of the petitioner for receiving copies under Section 207 of Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C and judgment and as and when the trial Court feels it necessary. In view of the same, the petitioner contention is that due to Covid-19, he was unable to contact his counsel and hence, he was not aware of the hearing date and hence, he has not appeared before the trial Court and the trial Court had issued Non-Bailable Warrant against him on 30.12.2020 and hence, filed the above Criminal Original Petition for recalling the said Non-Bailable Warrant.

4. The contention of the respondent/complainant is a chit and a Finance Company, the petitioner approached him and he subsequently had taken a chit amount and for the interest and liability, he had issued cheques and the cheques got dishonored. Now, after receiving the entire chit amount, for the discharge of his liability, cheques were given, however, the accused conveniently closed his account. Thereafter, statutory notice was issued and an untenable reply was received from the accused. The Calender Case is of the year 2013 and for the past 7 years, the case has been kept in pending for one reason or other.

5. Considering the submission and on a perusal of the materials, it is seen that the Calender Case is of the year 2013 and the case is pending before the Fast Track Judge (Magistrate Level) Thiruvallur for more than 7 years. The petitioner had filed the quash petition in the year 2014 and which was disposed of certain directions and since the case was periodically adjourned before the trial Court, finally, the petition was disposed of on 12.12.2020, and thereafter the trial Court, on 30.12.2020, recorded the observations of this Court in the quash petition. The respondent/complainant was ready before the trial Court along with the proof affidavit and no one represented the accused before the trial Court and the learned counsel for the accused was not present. Since both of them were not available, thereafter, notice was taken to the petitioner for his appearance and the petitioner has not received the notice and the notice was returned as "unclaimed." After giving several adjournments, the trial Court issued NBW against the accused.

The trial Court is empowered to issue NBW so that the trial Court can be progress and the accused can be produced before the trial Court. Either the accused or his counsel should participate in the trial and if both of them have not appeared before the trial Court, the trial Court has got powers to issue NBW, and in this case, after issuance of notice, and thereafter only, NBW was issued.

6. In view of the same, this Court finds that the issuance of NBW is absolutely right. The prayer sought for by the petitioner has to be granted only by the trial Court taking into consideration of the case and not by this Court. Without approaching the trial Court, the petitioner has approached this Court and at this stage, this Court is not inclined to entertain the petition.

7. Therefore, the counsel for the petitioner sought permission to withdraw the petition. Hence, permission is granted. With the above direction, this Criminal Original Petition is dismissed as withdrawn. It is open to the petitioner to approach the trial Court for his remedy to recall the NBW.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

dna

To

1.The Fast Track Judge (Magistrate Level) Tiruvallur.

2.The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.7038 of 2021

MG(CO)
KKV/16/04/2021

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