IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.19792 of 2018

Prakash .. Petitioner

Vs.

Tamil Nadu State Rep by its
The Inspector of Police,
Avinashipalayam Police Station,
Crime No.191/2007
Tiruppur District. .. Respondent

Prayer: Petition filed under Section 482 of Cr.P.C., to issue a direction to directing the learned Judicial Magistrate, Palladam, Tiruppur District to accept the surrender of the petitioner in connection with crime No.191 of 2007 on the file of the respondent, Kamanaickenpalayam Police Station, Tiruppur District on file of the respondent to consider the Re-Call petition under 70(2) CRL.P.C filed by the petitioner on the same day in accordance with law.

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For Petitioner : Mr.P.Kalimuthu

For Respondent : Mr.C.E.Pradap
Public Prosecutor

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O R D E R

This petition has been filed to issue a direction to the learned Judicial Magistrate, Palladam, Tiruppur District to accept the surrender of the petitioner in connection with crime No.191 of 2007, on the file of the respondent, Kamanaickenpalayam Police Station, Tiruppur District and to consider the Re-Call petition under 70(2) CRL.P.C filed by the petitioner on the same day in accordance with law.

2. The case of the prosecution is that on 22.10.2007, while the victim was herding the cow in Marappanakattuthottam, Karappalayam, the petitioner herein along with other accused persons has snatched the gold chain from her weighing about 5 sovereign and fled away from the scene of occurrence. Hence, the victim has lodged a complaint before the respondent Police in Cr.No.191 of 2017 for commission of offence under Section 379 IPC and after investigation a charge sheet was filed in C.C.No.133 of 2019, on the file of the learned Judicial Magistrate, Palladam, Tiruppur District. The Trial Court has issued Non Bailable Warrant against the petitioner. Challenging the same, the present petition has been filed by the petitioner to

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accept his surrender in connection with crime No.191 of 2007, on the file of the respondent Police and to consider the Re-Call petition filed under 70(2) Cr.P.C.

3. The learned counsel appearing for the petitioner submitted that earlier in another case, the petitioner was arrayed as accused for an offence under Section 392 r/w 397 IPC in S.C.No.219/2008, on the file of the Kamanaickenpalayam Police Station, Palladam Sub Division and FIR was filed before the learned Judicial Magistrate, Palladam, Tiruppur District, wherein the petitioner was convicted and sentenced to three years rigorous imprisonment from 30.09.2009 to 29.09.2013 and was incarcerated in the Central Jail, Coimbatore. While he was under incarceration, the petitioner was not able to surrender and the Trial Court had issued the Non Bailable Warrant against the petitioner which is not sustainable. In such circumstances, the respondent has to take any steps to produce the petitioner /convicted accused through PT warrant in C.C.No.133 of 2009 before the learned Judicial Magistrate, Palladam, Tiruppur District, which they failed to do.

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4. The learned counsel further submitted that after conviction period, he was released and living with his family in his native place and after coming to know about the fact of the said Non Bailable Warrant, the petitioner has filed a Surrender Petition under Section 70(2) Cr.P.C., before the Trial Court in connection with the above said Crime Number for recalling the Non Bailable Warrant. However the said petition has not been taken on file yet and hence the present petition is filed.

5. He further submitted that this Court may permit the petitioner to file a fresh re-call petition under Section 70(2) Cr.P.C before the learned Judicial Magistrate, Palladam, Tiruppur District.

6. The learned Government Advocate (Crl.Side) has no objection to this Court directing the petitioner to file a fresh recall petition and for this Court to issue a direction to the trial court to dispose of the same within a time stipulated by this Court.

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7. This Court has carefully considered the submissions made by the learned counsel for the petitioner and also perused the materials placed before it.

8. Considering the nature of the case, this Court, without going into the merits of the issue, permits the petitioner to file a fresh re-call petition under Section 70(2) Cr.P.C before the learned Judicial Magistrate, Palladam, Tiruppur District, within a period of two weeks from the date of receipt of a copy of this order. On filing of the said petition, the Trial Court shall dispose of the same on merits and in accordance with law as expeditiously as possible.

9. This Criminal Original Petition stands disposed of with the above observation.

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07.07.2021

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

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To

1. The Inspector of Police,
   Avinashipalayam Police Station,
   Crime No.191/2007
   Tiruppur District.

2. The Public Prosecutor,
   High Court of Madras,
   Chennai 600 104.

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