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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.19801 of 2021

V.Raj Natrajan

... Petitioner

Vs.

S.Ramamoorthy

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the learned Judicial Magistrate- II, Coimbatore to entertain the warrant recall petition filed by the petitioner dated 13.10.2021 in Crl.M.P.Sr.No.12418 of 2021 on the same day itself, without insisting upon the presence of the petitioner in the court in C.C.No.1291 of 2012 on the file of the learned Judicial Magistrate - II, Coimbatore.

For Petitioner : Mr.R.Rajarathinam
for Mr.A.Thiyagarajan

For Respondent : Mr.R.Vinoth Raja
Government Advocate [Crl. Side]

O R D E R

This Criminal Original Petition is filed to direct the learned Judicial Magistrate- II, Coimbatore, to entertain the warrant recall petition filed by the petitioner dated 13.10.2021 in Crl.M.P.Sr.No.12418 of 2021 on the same day itself, without insisting upon the presence of the petitioner in the Court in C.C.No.1291 of 2012, on the file of the learned Judicial Magistrate - II, Coimbatore.

2.The petitioner is A1 in C.C.No.1291 of 2012, facing trial for offence of defamation along with two others, on a private complaint filed by the respondent/complainant has filed this petition.

3.The contention of the petitioner is that the petitioner is presently residing in USA and carrying on with his business on the face of the complaint, which is extracted in Paragraph No.13 of the complaint filed by the defacto complainant. It is admitted that the petitioner was not present, when the other accused said to have accoused by the respondent on 10.11.2012. The only allegation is that at the instance of



the petitioner, the other accused had abused him that alone would not suffice to charge and proceed against the petitioner for the offence under Section 499 I.P.C.

4.He further submitted that in this case, the trial is completed and the case has been kept pending for one reason or the other. NBW was issued against the petitioner on 18.12.2019 and further, the docket entry shows that the case against A1 was to be split up, as regards the other accused the case to be disposed of. Contrary to the docket entry, no split up proceedings taken and the case is still pending, since NBW issued against the petitioner/A1. A2 in this case filed a petition in CrI.O.P.No.9783 of 2019 seeking direction to pronounce the Judgment in C.C.No.1291 of 2012. This Court by order dated 11.04.2019, directed the Judicial Magistrate-II, Coimbatore, to complete the trial proceedings and pass orders on merits and in accordance with law, within a period of four months, from the date of receipt of copy of that order. Thereafter, several four months passed and the order of this Court dated 11.04.2019 in CrI.O.P.No.9783 of 2019, not complied with. Be that as it may, in view of the NBW issued against the petitioner/A1, the petitioner/A1 had filed a recall petition under Section 70(2) Cr.P.C.

5.The learned counsel appearing for the petitioner relied upon the judgement of this Court in CrI.O.P.No.4514 of 2016, wherein this Court referring to several cases and finally had given the following directions:

"10.Ordered as under:

(i)The learned Special Judge/Chief Judicial Magistrate, Chengalpattu will entertain the recall petition of the petitioner without insisting upon his presence in the court.

(ii)The recall petition shall be represented on 05.03.2016 before the learned Judge.

(iii)The Trial Court will allow the recall petition and also direct the police to return the NBW.

(iv)The learned Special Judge/Chief Judicial Magistrate, Chengalpattu will continue the proceedings as devised under the Code of Criminal Procedure, 1973."

6.Further following the same, the trial Court to recall the NBW issued against the petitioner, not insisting the presence of the petitioner. The above said citation of this Court's ratio would be applicable to the petitioner's case, moreso, in the case tried as summons procedure. The petitioner is facing trial for offence under Section 499 I.P.C., wherein the maximum sentence is only two years and as per Section 255 Cr.P.C., the presence of the accused is not necessary for rendering the judgement and the court, in



summons cases can render judgement in the absence of the accused and according to the nature of the judgement, appropriate orders thereafter can be passed and presence of the accused not to be insisted.

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7. Further, the learned counsel for the petitioner referred to Section 248 Cr.P.C., wherein it is a procedure to be followed in a case, instituted otherwise or on police report, wherein sub-clause (2), it is stated that if the Magistrate finds the accused guilty, hearing the accused and pass sentence according to law, thus the question of sentence would not arise in summons cases, the accused is facing only a summons case.

8. The learned counsel appearing for the petitioner further relied upon the decision of the Hon'ble Supreme Court of India, in the case of Varkey Vs. Public Prosecutor reported in 1989 SCC Online Ker 418 : (1989) 2 KLT 364 : 1989 Cri learned Judge 2357.

9. This Court finds force in the submissions of the learned counsel appearing for the petitioner and also on perusal of the typed set of papers finds that this petitioner is facing trial for defamation under Section 499 of the I.P.C., which is under summons case procedure. In view of the same, the petitioner's presence may not be insisted and the absence of the petitioner would no way be an obstacle in completing the trial in this case. The petitioner admittedly is in USA not only on the date of the alleged occurrence, but even today, he is in USA. The petitioner and the other accused have some arbitration proceedings pending between them, in that proceedings the petitioner is to appear on 12.11.2021, physically and give his evidence. In view of the same, he apprehends that the pendency of the NBW would cause great prejudice and obstacle in free movement of the petitioner while entering or leaving India, to safeguard and to secure his movement and interest, he has to file a petition to recall NBW. In view of the same, this court directs the Judicial Magistrate No.II, Coimbatore, not to insist upon the petitioner's presence and to entertain and allow the recall petition filed by the petitioner in CrI.M.P.Sr.No.12418 of 2021 and also directs the police to return the Non-Bailable Warrant, and no other Law Enforcing Agency to detain the petitioner, pursuant to the Non-Bailable Warrant.

10. With the above directions, this Criminal Original Petition stands disposed of.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar



To

1.The Judicial Magistrate- II,
Coimbatore.

2.The Public Prosecutor,
High Court, Madras.

+1CC to Mr.A.Thiyagaarajan, Advocate SR.No.54470

Cr1.O.P.No.19801 of 2021

SPD (CO)

B.VC (26/10/2021)