



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD)No.20318 of 2021

and

Crl.M.P. (MD)No.11533 of 2021

WEB COPY

1.Krishnamoorthy

2.Malaisamy

3.Parimala

... Petitioners / Accused 1 to 3

Vs

1.The State rep. by
The Deputy Superintendent of Police,
Sivagangai.

2.The State rep. by
The Inspector of Police,
Ilayangudi,
Sivagangai District.
(Crime No.51 of 2016)

... Respondents/ Complainants

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to set aside the dairy order dated 04.12.2021 made in P.R.C.No.3 of 2017 on the file of the learned District Munsif cum Judicial Magistrate Court, Ilayangudi.

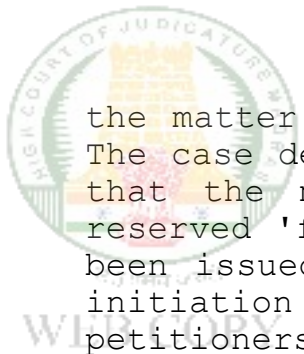
For Petitioners	: Mr.I.Abrar Md Abdullah
For Respondents	: Mr.E.Antony Sahaya Prabahar Additional Public Prosecutor

ORDER

Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the respondents.

2. The petitioners were shown as accused in Crime No.51 of 2016 registered on the file of the Inspector of Police, Ilayangudi, for the offences under Section 304(B) of IPC. Investigation was conducted and final report was filed against the petitioners. Cognizance was taken and the case is pending at the stage of committal in P.R.C.No.3 of 2017 on the file of the Judicial Magistrate, Ilayangudi.

3. The petitioners filed Crl.O.P.(MD)Nos.15955 of 2017 & 15498 of 2020. Interim order was granted in those quash petitions. However, it was not extended after 22.02.2021. It is stated that



the matter has been finally argued and it is pending 'for orders'. The case details downloaded from the high court's website indicate that the matter was argued on 29.04.2021 and that it has been reserved 'for orders'. In the mean while, non bailable warrant has been issued and the learned Committal Magistrate has also directed initiation of prosecution under Section 229(A) of IPC against the petitioners herein. Surety action has also been ordered to be taken. Aggrieved by the same, this petition has been filed.

4. The learned counsel for the petitioners reiterated all the contentions set out in the memorandum of grounds and called for setting aside the impugned diary order.

5. The learned Additional Public Prosecutor appearing for the respondents submitted that when the interim order of stay was no longer holding good, the petitioners are obliged to appear before the committal magistrate. Since they did not appear, the learned Committal Magistrate rightly issued non-bailable warrant against them. Since they were not recalled, the petitioners must have appeared before the trial Court. They failed to appear. Hence, the impugned action was rightly ordered to be initiated. He submitted that the impugned order does not call for any interference.

6. I carefully considered the rival contentions and went through the materials on record. No doubt, the committal proceedings are pending against the petitioners. They are obliged to appear before the committal magistrate. But the petitioners had earlier filed quash petitions before this Court and an interim order of stay was granted and it was in operation right upto 22.02.2021. The matter was also finally argued by the petitioners on 29.04.2021 and the quash petitions have been reserved 'for orders'. When the Hon'ble High Court is seized of the matter, the committal magistrate need not have issued the impugned orders. Of-course, mere pendency of the quash petitions cannot by itself operate as stay. The trial Court can even ignore such a mere pendency. But the case on hand is not one such. This is a case, in which, interim stay was in operation till the third week of February and later, the matter has also been argued and orders have been reserved. Thus, the High Court is effectively seized of the matter.

7. In these circumstances, issuance of non bailable warrant or directing registration of the case for the offence under Section 229(A) of IPC or initiating surety action is not necessary. The petitioner's counsel gives an undertaking that the first petitioner will appear before the committal court on the next hearing date ie. on 04.01.2022.

8. Recording this undertaking, the impugned diary orders are set aside. In other words, non bailable warrant issued against the petitioners is set aside. Direction to register a case for the offence under Section 229(A) of IPC is also set aside. Surety



action is also set aside. The learned trial Magistrate is directed to wait for pronouncement of the orders in the quash petitions. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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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 Munsif cum Judicial Magistrate, Illayangudi.
2. The Deputy Superintendent of Police,
Sivagangai.
- 3.The Inspector of Police,
Ilayangudi,
Sivagangai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.SENTHIL KUMARAIAH, Advocate (SR-39540[F] dated 20/12/2021)

Crl.O.P(MD)No.20318 of 2021
17.12.2021

RD(7.01.2022) 3P 6C