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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2022

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.NO.6556 OF 2022

AND

CRL.M.P.NO.3698 OF 2022

M.Ravibharathi @ Ravibhaarathi

... Petitioner

Vs.

M/S.Sree Gokulam Chit & Finance Co.(P.) LTD.,
(A Private Limited Company registered
under the Companies Act, 1956)
rep. by its Assistant Manager Business/
Authorised Representative,
Mr.K.Satheesh Kumar, No.66, Old No.356,
Arcot Road, Kodambakkam, Chennai 600 024.

... Respondent

PRAYER:

This Criminal Original Petition filed under Section 482 of Cr.P.C., to direct the learned Fast Track Court at Magistrate Level at Ambattur to receive the petition dated 07.03.2022 filed under Section 70(2) of Cr.P.C and recall the NBW without insisting upon the personal presence of the accused in STC No.218 of 2021.

For Petitioner : Mr.K.Sakthivel

O R D E R

This Criminal Original Petition has been filed seeking for a direction to the Fast Track Court at Magistrate Level at Ambattur to receive the petition dated 07.03.2022 filed under Section 70(2) of Cr.P.C and recall the NBW without insisting upon the personal presence of the accused in STC No.218 of 2021.

2. The learned counsel for the petitioner would submit that the petitioner is a Tamil writer, Poet, Social Activist and Organizer of Global Organization of Tamil Origin. The petitioner



has been arrayed as an accused for the offence under Section 138 of N.I. Act and facing Trial in STC No.218 of 2021 before the Fast Track Court at Magistrate Level at Ambattur. He would further submit that the case was listed on 08.11.2021 for questioning, the petitioner appeared before the Trial Court on 08.11.2021 and the case was adjourned to 01.12.2021 for questioning and surety. The petitioner was unable to appear on 01.12.2021, due to personal commitments. Thereby, the case was adjourned to 28.12.2021 and thereafter, once again adjourned to 28.01.2022. On the said date, physical hearing had been suspended due to Omicron variant of Covid-19 and the case was simply adjourned to 02.03.2022.

3. Learned counsel for the petitioner would submit that the Global Organization of Tamil Origin, organized World Tamil Parliament on 11th and 12th March, 2022 at International Trade Centre at Chennai and since the petitioner is the organizer, his presence was unavoidable. Thereby, the petitioner was unable to appear on 02.03.2022 before the Trial Court. Further, since the petitioner's earlier counsel failed to file the dispense with petition before the concerned Court, the petitioner has also changed his counsel. Thereby, new counsel entered into appearance on 02.03.2022 whereas, the Trial Judge refused to entertain the change of vakalat and Section 317 petition. Thereafter, the Trial Court had issued Non Bailable Warrant of arrest as if the petitioner was absent and no one appeared on behalf of the petitioner.

4. Learned counsel for the petitioner would further submit that the case now stands posted to 12.04.2022 and in order to submit himself and aid speedy trial, the counsel for the petitioner had filed an application to recall the Non Bailable Warrant under Section 70(2) of Cr.P.C on 07.03.2022 without the petitioner's presence along with the advance hearing petition whereas, the Trial Judge had returned the petition stating that "since the petitioner is not present and the notice has not been served, this petition is returned". He would further submit that this Court in CrI.O.P.No.4514 of 2016 dated 02.03.2016 in the case of "S.Sundar Vs. State rep by the Inspector of Police, Vigilance & Anti Corruption" had taken into consideration that the accused had engaged the counsel and that he has not absconded and he had wanted to proceed in the Criminal proceedings, had directed the Trial Judge to recall the warrant, even without insisting for the personal appearance of the petitioner.

5. Learned counsel for the petitioner further submit that the petitioner also undertakes to appear before the Court on the days insisted by the trial Court, without fail.



6. Heard and perused the materials available on record.

7. It is useful to refer to relevant paragraphs 7 to 9 of the judgment of this Court in CrI.O.P.No.4514 of 2016 dated 02.03.2016 in the case of "S.Sundar Vs. State rep by the Inspector of Police, Vigilance & Anti Corruption", which are extracted as follows:

"..7. The learned counsel for the petitioner would submit that in this branch of law, there is march of law. Earlier, there used to be not entertaining such recall petitions when the accused was not present in the court. This conception of compulsion of the presence of accused has been departed because of change in the judicial thinking. The fact that the accused, who is stated to have eluded has since engaged a counsel and wanted to participate in the criminal proceedings had effect on the courts.

8. The learned counsel for the petitioner would submit that without insisting upon the presence of the accused, the court can recall NBW. I hasten to add that the courts can impose certain conditions, but it should not be harsh or conditions should not be to terrorise the accused. In support of his said view, the learned counsel would cite the following decisions:

(i) VALAMPURI JOHN V. PETER JAMES [1997(2) MWN (CR.) 196

(ii) VALIULLAZ SHERIF V. STATE BY INSPECTOR OF POLICE, ALL WOMEN POLICE STATION, NELLORE [2000(3) MWN 28

(iii) SIRUGUDUGU NAGA VENKATA DURGAKUMARI V. SIRUGUDU JHANSILAKSHMI [(2007) 2 MLJ (CrI) 1668]

(iv) INDER MOHAN GOSWAMI AND ANOTHER V. STATE OF UTTARANCHAL AND OTHERS [(2007) 12 SCC 1]

9. Courts must protect the rights of the accused. But, at the same time, the court has to see that the offenders are prosecuted. This legal philosophy could be seen as a current judicial thing [SANJAY CHANDRA VS.C.B.I [2012(1)SCC 40] also known as 2G scam case. While striking a balance between these two extremes, cause of justice cannot be compromised. Now the fear of the petitioner is that as and when he shows his face, there is possibility of he being sent to jail. When he files recall petition, it is an indication that he will participate in the court proceedings. At the same time, there is fear of psychosis on the prosecution that the accused may put bottle necks in the administration of criminal justice. Now the law is very clear. Accused cannot be asked to present in court as a condition precedent to recall the NBW."



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8. Now coming to the case on hand, it is not the case where, the petitioner has absconded and evaded appearance before the Court. He has engaged counsel and he is ready to participate in the proceedings..

9. In view of the above, direction is issued to the learned Trial Judge to entertain the recall petition on the next hearing date or any day prior to that without insisting upon the appearance of the Petitioner before the trial Court. The petitioner is directed to file fresh petition for recalling Non Bailable Warrant. The learned Trial Judge shall recall the Non Bailable Warrant and he shall continue with the proceedings.

10. With the above direction, this Criminal Original Petition stands disposed of. Consequently, connected Criminal Miscellaneous Petitions is closed. However, it is made clear that the petitioner shall appear in person, if his presence is insisted by the Trial Judge for the progress of trial.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

shk/sai

To

The Judicial Magistrate,
Fast Track Court at Magistrate Level,
Ambattur.

+1cc to Mr.K.Sakthivel, Advocate, S.R.No.19335

Cr1.O.P.No.6556 of 2022
and
Cr1.M.P.No.3698 of 2022

MT (CO)
PM/08/04/2022