



Crl.O.P.No.24623 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **12.10.2022**

CORAM :

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.No.24623 of 2022

K.Selvamani

... Petitioner

Vs

S.Balamurugan

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to set aside the docket order dated 31.03.2022 passed in Crl.Appeal SR No.8529 of 2022 against STC No.204 of 2017 by the Principal District Judge, Salem and direct the Judicial Magistrate No.1, Sankagiri to recall Non Bailable Warrant issued in STC No.204 of 2017 and consider the petition for suspension of sentence under Section 389(3) of Cr.P.C. on the same day.

For Petitioner : Mr.S.Pushpakaran

For Respondent : Mr.S.Santhosh
Government Advocate (Crl.side)



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ORDER

This Criminal Original Petition has been filed praying to set aside the docket order dated 31.03.2022 passed in Crl.Appeal SR No.8529 of 2022 against STC No.204 of 2017 by the Principal District Judge, Salem and direct the Judicial Magistrate No.1, Sankagiri to recall Non Bailable Warrant issued in STC No.204 of 2017 and consider the petition for suspension of sentence under Section 389(3) of Cr.P.C. on the same day.

2. The learned counsel for the petitioner submitted that the respondent had filed a complaint against the petitioner for the offence punishable under Section 138 of Negotiable Instruments Acts and it was taken on file in STC No.204 of 2017 by the Judicial Magistrate No.1, Sankagiri. He further submitted that, in afore said case, the petitioner was convicted, vide judgement dated 15.02.2022, however, since the petitioner was not able appear before the Court on the date of judgment , the learned Magistrate has issued Non Bailable Warrant against him. Thereafter, the petitioner filed a Criminal Appeal before the Principal District Judge, Salem along with a petition under Section 389(3) of Cr.P.C. to suspend the sentence. But the afore said petition was returned on the ground that



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already Non Bailable Warrant issued against the petitioner is pending and hence the petition is not maintainable.

3. Admittedly, Non Bailable Warrant issued against the petitioner is pending, while filing the Criminal Appeal along with a petition to suspend the sentence. Therefore, the first appellate Court has rightly returned the petition, as not maintainable, vide order dated 31.03.2022 and hence, the same need not be interfered with by this Court.

4. At this juncture, the learned counsel appearing for the petitioner submitted that, it is suffice to issue appropriate direction to the jurisdictional Magistrate to consider the application to recall NBW, to be filed by the petitioner, and to pass orders on the same day.

5. Considering the submissions made by the learned counsel for the petitioner, the **learned Judicial Magistrate No.1, Sankagiri** is directed to consider the petition to be filed by the petitioner under Section 70(2) of Cr.P.C., to recall NBW already issued against him on its own merits in accordance with law and pass orders on the same day.



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6. With the above direction, this Criminal Original Petition is disposed of.

12.10.2022

Internet : Yes/ No
mst

To

1. The Judicial Magistrate No.1,
Sankagiri.

2.The Public Prosecutor
High Court of Madras.



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V.SIVAGNANAM, J

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