



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2022

CORAM

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.1120 of 2021
and
Crl.M.P.No.14331 of 2021

1. Kuppannan
2. Venkatachalam
3. Loganathan
4. Thangaraj
5. Selvam ... Petitioners/Petitioners/Accused

Vs.

Rep. By
The Inspector of Police,
Kalparapatty,
Attayampatty Taluk,
Salem District.

Crime No.437/2015. ... Respondent/Respondents/Complainant

PRAYER: Criminal Revision is filed under Sections 397 & 401 of Criminal Procedure Code to set aside the order passed in Crl.MP.No.4717 of 2021 in C.C.No.119 of 2016 on the file of Judicial Magistrate No.IV, Salem and direct to recall the warrant by allowing this petition for the interest.

For Petitioners : Mr.R.Marudhachalamurthy

For Respondent : Mr.S.Sugendran,
learned Government Advocate (Crl.side)



O R D E R

(This case has been heard through Video Conference)

This revision has been filed seeking to set aside the order dated 10.12.2021 passed by the learned Judicial Magistrate No.IV, Salem in CrI.M.P.No.4717 of 2021 in C.C.No.119 of 2016.

2. Learned counsel for the petitioner would submit that the petitioners are accused facing Trial in C.C.No.119 of 2016 on the file of the Judicial Magistrate No.IV, Salem. When the case was listed for hearing on 06.12.2021, witness summons were pending in respect of LW1 to LW3. He would further submit that the petitioners are members of the same family and since the petitioners were having covid symptoms, they have instructed their Advocates to file a petition under Section 317 of Cr.P.C seeking to dispense with their appearance. The Trial Judge had allowed the petition on 06.12.2021 and he had adjourned the matter to the next day. Since the petitioners were having covid symptoms even on next day, they had directed their counsels to file the application on next day also and it was filed by their Advocates. However, the Trial Court had dismissed the petitions filed under Section 317 of Cr.P.C and had issued Non-Bailable Warrant against the petitioners. Learned counsel for the petitioner would submit that even on 07.12.2021, witnesses summons were pending and the witnesses did not appear before the Court on that day. He would submit that after coming to know that Non Bailable warrant were issued against the petitioners, the petitioners on 10.12.2021 had filed the petition under Section 70(2) of Cr.P.C seeking to recall Non Bailable Warrant without appearing before the Trial Court. However, the learned Judge had dismissed the petition and posted the case to 06.01.2022.

3. The learned counsel for the petitioner would further submit that the absence of the petitioners before the Trial Court was not wilful and it was only due to the reason they were having covid symptoms. Further the witness summons were pending and it was only a formal hearing and no prejudice had happened to the respondents on account of their absence. Learned counsel for the petitioner would further submit that the petitioners undertake to appear before the Trial Court on the next hearing date and they also undertake to cooperate with the Trial Court for speedy disposal of the case and thereby, he would seek to set aside the order dated 10.12.2021 and seek for stay of the Non Bailable Warrant.

4. Mr.S.Sugendran, learned Government Advocate (crl.side) appearing for the respondent would submit that it is the case of year 2016, the petitioners had been repeatedly not appearing



before the Trial Court taking turns and thereby, the Trial Court was unable to proceed further in the case and the case has been posted for trial and since the petitioners did not appear before the Court on 06.12.2021, the learned Judge had posted the case to 07.12.2021 and even on that day, they did not appear before the Court. He would submit that as of now, the case stands posted to 15.02.2022 for examination of witnesses L.W.1 to L.W.3.

5. At this juncture, the learned counsel for the petitioner would submit that the petitioners were having covid symptoms and that is the reason, they did not appear before the Court. He would reiterate that their absence before the Court is not wilful and it was only a formal hearing and the witnesses were also not present before the court. He would submit that the petitioners are prepared to appear before the Court, once the Courts are open for physical hearing and they also undertake to appear before the Court on next hearing date on 15.02.2022 and cooperate for speedy disposal of the case.

6. Heard the learned counsels and perused the materials available on record.

7. Taking into consideration the submissions made by the learned counsels and also taking note of the dates and events, this Court of the opinion that the order dated 10.12.2021 passed by the learned Judicial Magistrate IV, Salem in CrI.M.P.No.4717 of 2021 in C.C.No.119 of 2016 can be set aside on condition the petitioners shall appear before the Trial Court on 15.02.2022 without fail and file petition for recalling the warrant. On such appearance and filing petition for recalling warrant, the Trial Court shall recall the warrant issued against the petitioners. It is made clear that the petitioners shall cooperate with the Trial Court for speedy disposal of the case and they shall cross examine the witnesses on the same day of the examination in chief before the Trial Court.

8. In view of the above, this Criminal Revision Case stands allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Cs-IX)

//True copy//

Sub Assistant Registrar

shk



1. learned Judicial Magistrate IV,
Salem.

3. The Inspector of Police,
Kalparapatty,
Attayampatty Taluk,
Salem District.
Crime No.437/2015.

+1cc to Mr.R.Marudhachalamurthy, Advocate SR.No.1482

CrI.R.C.1120 of 2021
and
CrI.M.P.No.14331 of 2021

PVS (CO)
 GMY (21/01/2022)