



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P. (MD)No.19284 of 2018

and

Crl.MP (MD)No.8674 of 2018

P.Pandi @ Attack Pandi

: Petitioner/Respondent/A1

Vs.

1.State rep. By its
The Inspector of Police,
C-2, Subramaniapuram (L & O)
Police Station,
Madurai City.
(Crime No.68 of 2013)

2.The Inspector of Police,
CBCID, Madurai.
(R2 impleaded as per the order
made in Crl.MP (MD)No.9672 of 2018
dated 23/11/2018)

: Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records of the proceedings in Crl.M.P No.6877 of 2013, dated 19/12/2013 passed by the Judicial Magistrate No.IV, Madurai and set aside the same as illegal.

For Petitioner : Mr.C.Mayilvahana Rajendran
For Respondents : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

O R D E R

This criminal original petition has been filed by the petitioner seeking to set the order passed by the Judicial Magistrate No.IV, Madurai, in Crl.M.P No.6877 of 2013, dated 19/12/2013.

2.The case of the prosecution in brief:-

The case in Crime No.68 of 2013 was registered against this petitioner for the offences under sections 147, 148, 341, 427, 403 IPC and later, it was altered into 147, 148, 341, 427, 302, 120(B) and 109 r/w 34 IPC. During the course of investigation, the



respondent police arrested 16 persons. They also moved an application before the Judicial Magistrate No.4, Madurai, under section 82 Cr.P.C in Crl.M.P No.6877 of 2013 to declare the petitioner as 'proclaimed offender'. That order was passed on 19/12/2013 directing this petitioner to appear before the court on 22.01.2014.

3. Seeking to set aside the above said order, this petition is filed.

4. Heard both sides.

5. At the out set, the learned Additional Public Prosecutor would submit that this petitioner is involved in so many cases involving the heinous offence of murder etc. He was also a history sheeted rowdy and in one of the cases, he has been convicted and undergoing life imprisonment. During the course of investigation, he was moving from one place to another, from one State to another making the investigation process be halt or stopped. Noting that the petitioner is a notorious history sheeted rowdy and his presence could not be secured, the respondent police initiated proceedings as noted above.

6. As mentioned earlier, now he has been secured and convicted in a criminal case and undergoing the life imprisonment. He moved an application before the concerned court in Crl.M.P No.6877 of 2013 seeking an order to remove attachment order and hand over the attached property. That was heard and the Judicial Magistrate No.4, Madurai dismissed the application, on 10/11/2020. Against which, he moved criminal appeal before the Principal District Judge, Madurai. That came to be dismissed, by order, dated 28/02/2002 in Criminal Appeal No.106 of 2019. In pursuance of the above said order, the property, which was under attachment was also handed over to the wife of the petitioner. Evidencing the same, the respondent also produced the acknowledgment of the wife of the petitioner. So pointing out this, the learned Additional Public Prosecutor would submit that the matter has become infructuous.

7. Now the counsel appearing for the petitioner insisted that when proper procedure has not been followed, even though subsequent to the order, the petitioner has been secured and remanded to judicial custody and the attachment of the property was also raised, still the illegality cannot be allowed to continue and that order requires to be set aside.

8. The ground on which, this petitioner came to be filed is that proper procedure under section 82 Cr.P.C has not been followed.



9. Section 82 Cr.P.C reads as follows:-

"82. Proclamation for person absconding -(1) If Any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specific place and at a specified time not less than thirty days from the date of publishing such proclamation;

(2) The proclamation shall be published as follows-

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or home-stead in which such person ordinarily resides or to some conspicuous place of such town or village;

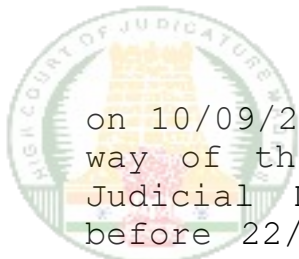
(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides;

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of subsection (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day."

10. So according to the learned counsel appearing for the petitioner, proper notice was not effected in the place where this petitioner was ordinarily residing. This sort of contention is not wholly acceptable. Because he was moving from one place to another hiding himself.

11. Reading of the orders shows that proper steps have been taken in pursuance of dismissal of the anticipatory bail. This petitioner did not surrender before the respondent police and cooperative with them to complete the investigation process. During the course of investigation, on the basis of the application made by the police, NBW was issued against the accused



on 10/09/2013. Even after that, there was no response. Again by way of this proclamation, he was directed to appear before the Judicial Magistrate No.4, Madurai or respondent police on or before 22/01/2014 and the respondent police has also directed to affix the copy of the proclamation in conspicuous place. So now in the residence of the accused, notice was also affixed and in the court notice board. Apart from that, notice was also ordered to be published in Tamil Daily. The proclamation format is also enclosed. It appears that in spite of the above said direction, he did not appear. So the contention on the part of the petitioner that no proper procedure as stated in 82 Cr.P.C is followed is not at all acceptable. The petitioner cannot take advantage of his own wrong. Apprehending arrest, he was hiding himself. Section 82 Cr.P.C has been enacted only for meeting such sort of situation.

12.No doubt, in the above said proclamation, final order was not passed. But attachment have been effected. Even though it is a subsequent order, that would not vitiate the proceedings. So I find absolutely no merit in this petitioner and accordingly, it deserves dismissal.

13.In the result, this criminal original petition is **dismissed as infructuous**. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

// 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 Judicial Magistrate No.IV,
Madurai.
2. The Inspector of Police,
C2, Subramaniapuram (L&O) Police Station,
Madurai City, Madurai.



3. The Inspector of Police,
CBCID, Madurai.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.C.MAYIL VAHANA RAJENDRAN, Advocate (SR-11447[F]
dated 11/03/2022)

Crl.O.P.(MD)No.19284 of 2018

10/03/2022

USK/25.03.2022/5P/6C