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Crl.O.P.No.18770 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.OP.No.18770 of 2023
and Crl.MP.No.12505 of 2023

1.M/s. Kerns Aero Products Private Limited,
Represented by its Director T.G.S.Mahesh,
No.A-10, SIPCOT Industrial Park,
Irungattukottai, Sriperumbudur Taluk,
Kanchipuram District – 602 117.

2.T.G.S.Mahesh,
Director,
No.A-10, SIPCOT Industrial Park,
Irungattukottai, Sriperumbudur Taluk,
Kanchipuram District – 602 117.

3.Vanitha Mahesh,
Director,
No.A-10, SIPCOT Industrial Park,
Irungattukottai, Sriperumbudur Taluk,
Kanchipuram District – 602 117.

.. Petitioners

Vs.

B.Indumathi,
Income Tax Officer,
TDS Ward – 2(2),
Chennai – 600 006.

.. Respondent



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PRAYER : This Criminal Original petition filed under Section 482 of Cr.PC to call for the records relating to the E.O.C.C.No.108 of 2019 before the Additional Chief Metropolitan Magistrate, Economic Offences II at Egmore, Chennai and set aside the docket order dated 25.07.2023 returning the petition filed u/s 70(2) of the Cr.P.C.

For Petitioner : Mr.A.V.Arun

ORDER

This petition has been filed challenging the docket order passed by the Additional Chief Metropolitan Magistrate, Economic Offences II at Egmore, Chennai, dated 25.07.2023, returning the application filed under section 70(2) of Cr.P.C for recalling the non-bailable warrant issued on 23.06.2023.

2. It is seen from records that the petitioners have already paid the necessary compounding fee before the competent authority to compound the offence and the orders are yet to be passed by the competent authority. If the same is done, the proceedings itself will come to an end. That apart, it is seen that the petitioners were not present on the date of hearing on 23.06.2023 and that is the reason why the Court below had issued non-



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bailable warrant. While filing the application to recall the non-bailable warrant, the petitioners were not present and therefore, the Court below refused to entertain the application.

3. In appropriate cases, a non-bailable warrant can be recalled without the personal presence of the accused and the law on this issue has been discussed in *[Karuppiah @ Chinnathambi Vs The Inspector of Police, Embal Police Station, Avudaiyarkoil Taluk, Pudukottai District]* reported in *2014 4 MLJ Crl 634*. This was also subsequently followed in another judgment *[Dr. Zubaida Begum Versus State represented by the Inspector of Police District Crime Branch Kancheepuram]* reported in *2016 2 MLJ Crl 490*. Therefore, it is not as if the Court below cannot recall the non-bailable warrant in the absence of the accused persons. However, the discretion is given to the Court to insist for the appearance of the accused persons.

4. In the instant case, the petitioners have already paid the compounding fee and the necessary charges and the authority is yet to pass the compounding order. Under such circumstances, it may be more



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appropriate to entertain the application by imposing necessary conditions.

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5. In the light of the above discussion, there shall be a direction to the petitioners to represent the application for recalling the non-bailable warrant issued on 23.06.2023 and the Court below shall pass orders on the same day in the said application.

6. This Criminal Original Petition is disposed of with a direction to the second petitioner to appear before the Court below on 21.08.2023 and file the application for recalling the non-bailable warrant. Insofar as the third petitioner is concerned, an application under section 317 of Cr.P.C can be entertained, while entertaining the petition for recalling the non-bailable warrant.

18.08.2023

Index : Yes/No

Speaking order: Yes/No

Neutral citation: Yes/No

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Note : Issue order copy today



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To
The Additional Chief Metropolitan
Magistrate (Economic Offences II),
Egmore, Chennai.



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N.ANAND VENKATESH, J

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