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CrI.O.P.No.21886 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.10.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.21886 of 2023

E.Ravindran

.. Petitioner/Accused-A4

/versus/

1.The State Rep by
The Deputy Superintendent of Police,
Anti Trafficking Cell
Crime Branch CID
Egmore, Chennai 600 008.
(Cr.No.4 of 2021)

.. Respondent/Complainant

2.Bhawati Sarkar

.. Respondent/Defacto Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to
call for the records made in Special S.C.No.163/2023 on the file of Special
Judge/Principal Sessions Judge, Chennai and quash the same.

For Petitioner :Mr.G.Kartheeban

For Respondents :Mr.S.Udaya Kumar
Government Advocate(CrI.Side) for R1



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ORDER

The petitioner is one of the accused in Spl.S.C.No.163 of 2023 on the file of the Special Judge/Principal Sessions Court at Chennai for the alleged offence under Section 354(A) of IPC and Section 4 of Tamil Nadu Prevention of Women Harassment Act and 3(1)(w)(ii) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The grievance of the petitioner is that, the summon was sent to his e-mail ID by the trial Court for his appearance, which according to him, is not legally permissible and therefore, the summons has to be quashed. According to the petitioner, without complying, this petition is filed to quash Spl.S.C.No.163 of 2023 stating that he is innocent and ignorant of the incident and it is the first accused, who committed the alleged offence. While so, the summons issued to him through e-mail is violation of Sections 62 and 64 of Criminal Procedure Code. It is contended that the petitioner is presently in South Korea pursuing his avocation and therefore, he prefers the quash petition against the summons served to him through e-mail. The petition though appears to quash the summons for non compliance of the procedure laid under



Sections 62 and 64 of the Criminal Procedure Code, it is the prayer to quash the Special S.C.No.163 of 2023 for the reason stated in the grounds of the petition.

3. The petitioner herein claims innocence but the material collected during the investigation show prima facie case to proceed against him. Therefore, he is bound to participate in the trial to prove his innocence.

4. As far as the alleged violation of the procedure causing summons to him under Chapter VI of the Code lays down the process to compel appearance either by issuance of summons under Section 62 Cr.P.C., or warrant of arrest under Sections 70 and 71 of Cr.P.C. As far as the case of the petitioner is concerned, he is an accused against whom the final report has been filed and the Court has taken cognizance. For his appearance summons has been issued through e-mail, since he is not residing in India, but outside the territory jurisdiction. It is made clear that it is aware the pendency of the case and legal necessity to appear before the trial Court to participate the trial, the procedure hand made of justice under Section 62 Cr.P.C., while speak about how the summons to be served. Section 64 of Cr.P.C., speaks about what the Court should do, if the persons summoned, cannot be found.



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5. For the convenient sake, Section 64 of Cr.P.C., is extracted below.

“64. Service when persons summoned cannot be found:-

Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.”

6. When admittedly, the accused is residing outside the territory of India, serving summons personally is not easily possible. Therefore, under Section 64 of Cr.P.C., a duplicate of the summon can be left with any adult member of the family or any other person requesting him to appear before the Court. If that is also not possible, the Court has to make an alternate arrangement either to issue proclamation or paper publication for his appearance. In this case, the Court concerned was able to get the e-mail ID of the accused and had served the summons to him through his e-mail. There is no error or illegality in serving the summons through e-mail. The facts remains that the petitioner is aware of the pendency of the case against him and he is also aware that he is summoned for his personal appearance. It is for him to



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appear before the Court and if necessary, seek for dispensing his personal appearance for the subsequent hearing in the manner known to law. Making an illusionary challenge to the manner on which summons served for appearance the accused/petitioner prays for quash of the complaint.

7. The reasons stated, the complaint in the petition to quash is not sustainable. Accordingly, this Criminal Original Petition is dismissed. The Government Advocate (CrI.Side) submitted that the accused failed to appear on the hearing date, despite summon served to him through e-mail. Hence, NBW issued and pending. If the petitioner/accused appear in person and seek for recall the warrant, his petition may be considered expeditiously. In case of failure to appear within the reasonable time, the trial Court shall take necessary steps to secure the accused through Indian Embassy at South Korea and seek for his deportation to appear before the trial Court and participate in the trial.

17.10.2023

Index:yes/no
Speaking order/non speaking order
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To:
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- 1.The Special Judge/Principal Sessions Judge at Chennai.
- 2.The Deputy Superintendent of Police, Anti Trafficking Cell
Crime Branch CID,Egmore, Chennai 600 008.
- 3.The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN, J.

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