



Crl.R.C.No.1728 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1728 of 2023

B.Vidyaranya

... Petitioner

Vs.

M.Suresh Babu

... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.4986 of 2023 dated 14.09.2023 on the file of the learned Judicial Magistrate, Fast Track Court (FAC), Hosur.

For Petitioner : Mr.S.Suresh for
Mr.M.P.Saravanan

ORDER

This Criminal Revision Case has been filed challenging the dismissal order, dated 14.09.2023 passed by the Judicial Magistrate, Fast Track Court (FAC), Hosur in C.M.P.No.4986 of 2023 in S.T.C.No.109 of 2019.

2.The contention of the petitioner is that the petitioner is an accused in a private complaint in S.T.C.No.109 of 2019 filed by the



CrI.R.C.No.1728 of 2023

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respondent for offence under Section 138 of the Negotiable Instruments Act, 1881. Earlier, the petitioner filed Quash Application in CrI.O.P.No.30035 of 2019 against S.T.C.No.109 of 2019 and this Court, by order, dated 08.11.2019 admitted the same and granted interim stay, thereafter, the same was dismissed for non-prosecution due to non-appearance of the petitioner's counsel. Since the Counsel before this Court was not aware about the dismissal, the dismissal could not be informed to his counter part before the trial Court. Before the trial Court, petitions under Section 317 Cr.P.C., regularly filed by the petitioner. This being so, on 14.09.2023, the trial Court recording that from 30.08.2019, the petitioner failed to appear and regularly filed petitions under Section 317 Cr.P.C., and finding no justifiable reason in the 317 Cr.P.C., petition, had dismissed the same and further issued Non Bailable Warrant against the petitioner.

3.He further submitted that the petitioner is facing yet another prosecution under Section 138 of the Negotiable Instruments Act, 1881 in S.T.C.No.115 of 2019 before the learned Judicial Magistrate, Fast Track Court, Hosur. As against the same, the petitioner filed Quash Application



CrI.R.C.No.1728 of 2023

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in CrI.O.P.No.19178 of 2021 and this Court admitted the same. The primary ground raised is that without arraying the company, the petitioner arrayed as accused which is an incurable defect. The Hon'ble Apex Court in the case of "*Aneeta Hada Versus Godfather Travels and Tours Private Limited* reported in (2012) 5 SCC 661" held that no prosecution against the Directors or Partners of the company or partner of the firm cannot be proceeded unless the Company or the firm are made as accused.

4.The learned counsel for the petitioner submits that the petitioner apprehends arrest in view of the Non Bailable Warrant issued by the trial Court on 14.09.2023. Now, the petitioner is willing to appear before the trial Court and file a petition under Section 70(2) of Cr.P.C., to recall the Non Bailable Warrant and further undertakes to participate in the trial and defend the case.

5.Considering the submissions and on perusal of the materials, it is seen that the trial Court dismissed the petition under Section 317 Cr.P.C., and also issued Non Bailable Warrant against the petitioner on



CrI.R.C.No.1728 of 2023

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14.09.2023 since the case is kept pending from the year 2019 for one reason or other. Now, the petitioner undertakes to appear before the trial Court and file a petition to recall Non Bailable Warrant and defend the case. In view of the same, there is no impediment for the trial Court to proceed with the trial. To ensure the presence of the petitioner, such order passed by the trial Court. Now, the apprehension of the petitioner is misplaced.

6.In view of the above, the petitioner is directed to appear before the trial Court and file a petition under Section 70(2) of Cr.P.C. Since the offence under Section 138 of the Negotiable Instruments Act, 1881 is a bailable offence, the trial Court shall recall the Non Bailable Warrant issued against the petitioner. The only concern of the trial Court is the progress of the case.

7.With the above direction, this Criminal Revision Case is disposed of.

13.10.2023

vv2



CrI.R.C.No.1728 of 2023

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Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

Speaking Order/Non-Speaking Order

To

The Judicial Magistrate,
Fast Track Court (FAC), Hosur.



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Crl.R.C.No.1728 of 2023

M.NIRMAL KUMAR, J.
vv2

Crl.R.C.No.1728 of 2023

13.10.2023