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CrI.O.P.No.31047 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.31047 of 2022 and
CrI.M.P.No.259 of 2023

Sunshine Trading Co.
Through Sole Proprietor,
Shahrukh Malik (M/25), S/o.Mohamed Rahis,
3/11, Sector 2, Rajendra Nagar,
Sahibabad, Ghaziabad, U.P.

... Petitioner

Vs.

N.P.Vikram Prakash,
S/o., Perumal Chettiyar,
Perichi Lane, Virudhachalam,
Cuddalore-606001.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the docket order dated 18.11.2022 passed by the learned Judicial Magistrate No.I, Virudhachalam in S.T.C.No.893 of 2021.

For Petitioner : Mr.S.Jayaseelan
For Respondent : Mr.R.Sankarasubbu

ORDER

This Criminal Original Petition has been filed to set aside the docket order, dated 18.11.2022 passed by the learned Judicial Magistrate



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No.I, Virudhachalam in S.T.C.No.893 of 2021.

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2.Learned counsel for the petitioner submitted that the petitioner is hailing from Gazhiabad, Uttar Pradesh, with great difficulty, he has to travel from Gazhiabad to trial Court at Virudhachalam which is around 2500 kms. He further submits that petitioner denies the liability of the cheque, hence, he engaged and instructed his counsel to represent on behalf of him before the trial Court. The trial Court without entertaining the petition filed by the petitioner's counsel, issued Non-Bailable Warrant on 28.06.2022, hence, he is apprehending. He further submits that initially, bailable warrant was issued against the petitioner and thereafter, petition to recall the same filed on 18.11.2022, the same was returned and on the same day, Non-Bailable warrant issued.

3.Learned counsel for the respondent submitted that in this case, respondent filed private complaint against the petitioner, which was taken on file as S.T.C.No.893 of 2021 by learned Judicial Magistrate No.I, Virudhachalam, thereafter, summon attempted to be served to petitioner, but he evaded the same. After that, bailable warrant issued



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against petitioner in C.M.P.No.1923 of 2022, dated 27.06.2022 and the same was attempted to be served through jurisdictional Police. The trial Court on 28.06.2022 found the unserved returnedailable warrant issued through Assistant Superintendent of Police, Virudhachalam for execution and seeks to issue fresh warrant to Superintendent of Police, Ghaziabad as the petitioner is residing at Ghaziabad. Thereafter, on 06.09.2022, the petitioner engaged an Advocate named Mr.S.Jayaseelan, the counsel on record, who filed vakalat on behalf of the petitioner along with a petition under Sections 205 and 319 Cr.P.C.

4.In the meanwhile, the petitioner filed a petition under Section 482 Cr.P.C., to set aside the order, dated 06.09.2022 passed by learned Judicial Magistrate No.I, Virudhachalam and to direct the learned Magistrate to consider application filed by the petitioner under Sections 205 & 317 Cr.P.C along with vakalath and to recallailable warrant issued against the petitioner, dated 28.06.2022. On 30.09.2022, this Court ordered dispense with and directed the Registry to number the petitioner in Crl.M.P.No.15294 of 2022 in Crl.O.P.SR.No.46875 of 2022. On 06.10.2022, the petitioner produced the online copy of that



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order in Crl.M.P.No.15294 of 2022 in Crl.O.P.SR.No.46875 of 2022 before the trial Court. Thereafter, Crl.O.P.No.27185 of 2022 was assigned and now subsequently it has become infructuous since the bailable warrant is converted to Non-Bailable Warrant vide order, dated 18.11.2022, which is under challenge.

5.Learned counsel for the respondent further submits that the petitioner neither appeared before the trial Court nor properly instructed his counsel or produced any documents in support of the petition filed under Sections 205 & 317 Cr.P.C. The trial Court only directed the petitioner to appear and execute vakalat and also directed to give undertaking that his identity will not be disputed, recording of evidence in his absence will not be questioned. Now, the case is pending without any progress from the year 2021. Hence, he prayed for appropriate direction of this Court.

6.At this stage, learned counsel for the petitioner submitted that the petitioner is willing to appear before trial Court on the next hearing date (24.07.2023).



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7.In view of the above, the petitioner is directed to appear before the trial Court on the next hearing date on 24.07.2023 or any day before that and file a petition to recall the Non-Bailable Warrant. The trial Court to consider the petition for recalling Non-Bailable Warrant on the same day it is presented.

8.With the above direction, this Criminal Original Petition is disposed of. Consequently, the connected Miscellaneous Petitions are closed.

27.06.2023

Speaking Order/Non-Speaking Order

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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To

The Judicial Magistrate No.I,
Virudhachalam.



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M.NIRMAL KUMAR, J.
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