



WEB COPY



CRL.O.P.No.31559 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.31559 of 2022

and

CrI.M.P.No.19317 of 2022

Murugan

... Petitioner/A-2

Versus

State,

Represented by the Inspector of Police,

Burgur Police Station,

Erode District.

Crime No.17/2013

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to direct the respondent police not to harass the petitioner through the Non-Bailable Warrant issued in P.R.C.No.6/2022 on the file of the Judicial Magistrate-II, Bhavani as if the petitioner is the second accused Komali @ Sithdhan, son of Thavasi.

For Petitioner : V.Vijayakumar

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

The petitioner/A2 in PRC No.6/2022 has filed this petition seeking to not to harass the petitioner on the ground that petitioner has been wrongly



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arrayed as Accused No.2 in the final report filed by the respondent before learned Judicial Magistrate-II, Bhavani.

2. Learned counsel for the petitioner submits that the petitioner is Murugan, son of Sidhan, aged about 62 years. In the charge sheet, Accused No.2 has been shown as one Komali @ Sithdhan S/o.Thavasi. His address has been shown as Indira Nagar, Kundri, Kadambur. The petitioner is a resident of Cliaments Thotti, Kundri, Kalkadamboor, Sathyamangalam Taluk, which is a different place. He further submits that the Anthiyur Forest range officer has filed a complaint against the petitioner under the Tamilnadu Forest Act in O.R.No.4/2013 which was taken on file as C.C.No.300/2018. Likewise, on the similar allegation a case in O.R.No.1/2011 registered against the petitioner which was taken on file as C.C.No.221/2018. In both cases, the petitioner already filed discharge petition on similar grounds. He further submitted that the present case foisted against the petitioner is for offences under Sections 307, 324 of Indian Penal Code, 1860, Section 21(d), 21(h) and 41 of Tamilnadu Forest Act, 1882 and Section 25(1)(B)(a) of Arms Act, 1959. The petitioner was never called for any enquiry and he was not given any opportunity to give his explanation about the wrong identity. The



petitioner was very much residing in the aforementioned address but the absconding charge sheet has been filed before the Judicial Magistrate and Non Bailable Warrant was issued against him on 21.04.2022. Hence, the petitioner has filed the above petition.

3. Learned Additional Public prosecutor appearing for the respondent Police submits that Aadhaar card and Ration card produced by the petitioner are found to be different and the same has to be verified. In this case, the petitioner escaped from the scene of occurrence and A1/Perumal surrendered, who gave a confession implicating the petitioner. Further, L.W.1 to L.W.4, the Forester and Forest Guards, who sustained injury, have all identified the petitioner. The petitioner's involvement in the case has been confirmed by the statement of witnesses and materials collected. Thereafter, charge sheet filed. Now the petitioner taking advantage by producing a different Aadhaar card and Ration card, which are factual in nature and it has to be decided before the trial Court and the same cannot be entertained here. He fairly submitted that in this case the petitioner was not arrested and he was not called for any enquiry during investigation.



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4. Considering the submissions made and on a perusal of materials, it is seen that the petitioner was not called for any enquiry before and he was not arrested in this case. NBW has been issued by the learned Judicial Magistrate-II, Bhavani. The only apprehension of the petitioner is that on the strength of NBW he would be remanded and he denies the crime.

5. In view of the above facts and circumstances, learned Judicial Magistrate No.II, Bhavani is directed to entertain the recall petition filed by the petitioner seeking to recall NBW issued against him and pass appropriate orders on the same. With regard to mistake and identity, which is a matter of fact, it can be decided by the concerned trial Court.

With the above directions, the Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Internet : Yes/No
rsi



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To

- 1.The Inspector of Police,
Burgur Police Station,
Erode District.
- 2.The Judicial Magistrate-II,
Bhavani.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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