



Crl.R.C.(MD).No.591 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.07.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD)No.591 of 2023

and

Crl.M.P(MD).No.8564 of 2023

R.Kanmani

... Petitioner/Petitioner

Vs.

1. The State rep. by
The Inspector of Police,
District Crime Branch,
Dindigul.
(Crime No.76 of 2011)

2. Aswanth Kannan

... Respondents/Complainants

(R2 is suo motu impleaded as per
order of the Court, dated 27.06.2023
in Crl.M.P(MD).No.9082 of 2023)

PRAYER: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., to call for the records relating to the order, dated 23.03.2023 made in Crl.M.P.No.547 of 2023 in C.C.No.16 of 2023 on the file of the Judicial Magistrate Court No.II, Dindigul dismissing the warrant recall petition filed under Section 70(2) Cr.P.C., by the petitioner and to set aside the same.



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For Petitioner : Mr.M. Ajmalkhan
Senior Counsel
for M/s. Ajmal Associates

For 1st Respondent : Mr.T.Senthilkumar
Additional Public Prosecutor

For 2nd respondent : Mr.K.Vinoharan

ORDER

This Criminal Revision is filed to call for the records relating to the order, dated 23.03.2023 made in Crl.M.P.No.547 of 2023 in C.C.No.16 of 2023 on the file of the Judicial Magistrate Court No.II, Dindigul, dismissing the warrant recall petition filed under Section 70(2) Cr.P.C., by the petitioner and to quash the same.

2. The petitioner and other accused are said to have committed offence under Sections 120B, 406, 420, 466, 471 & 506(i) IPC. Hence, the respondent police registered the case in Crime No.76 of 2011. After completing investigation, the respondent police filed the final report before the learned Judicial Magistrate No.II, Dindigul. The petitioner is arrayed as A3. All the accused filed the quash petition in Crl.O.P(MD)No.13961 of 2016 before this Court and this Court dismissed the quash petition and dispensed with the



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personal appearance of all the accused except this petitioner. Thereafter, this Court issued a direction to split up the case in C.C.No.298 of 2016 as against the petitioner alone and directed to continue the trial for the remaining accused. Accordingly, C.C.No.298 of 2016 was split up and C.C.No.16 of 2023 was assigned as against the petitioner. She did not appear and hence non-bailable warrant was issued on 21.12.2022 and to recall the same, she filed a petition under Section 70(2) Cr.P.C., and the same was dismissed. Challenging the said dismissal order, the petitioner filed this revision petition.

3. This Court by order, dated 27.06.2023 passed the following order in Crl.M.P(MD).No.9082 of 2023 in Crl.R.C(MD).No.591 of 2023:

“ The above petition has been filed seeking orders to implead the petitioner / proposed second respondent as a second respondent in Crl.R.C(MD).No.591 of 2023.

2. Heard the learned counsel for the petitioner, the learned counsel for the first respondent and the learned Government Advocate (Crl. Side) for the second respondent.

3.This petition is allowed and the Registry is directed to carry out the necessary amendments to the cause title. After making amendment, notice is ordered to the second respondent returnable by 04.07.2023. Private



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Notice is also permitted.

4. Post the matter on 04.07.2023.”

4. Thereafter, the case was posted on 04.07.2023. On that day, this Court passed the following order:

“The petitioner / A3 has filed a petition in Crl.M.P.No.547 of 2023 before the learned Judicial Magistrate No.II, Dindigul, to recall the warrant issued against her.

2.From the record, it is revealed that the petitioner along with other accused filed a quash petition in Crl.O.P(MD).No.13961 of 2016 before the Court and the same was dismissed on 26.11.2019. The learned trial Judge required her presence to frame charges and consequential questioning to answer the charge. But, she did not appear on 13.09.2021, 18.10.2021, 22.10.2021, 06.06.2022,, 20.06.2022, 06.07.2022,, 27.07.2022, 17.08.2022, 12.10.2022, 16.12.2022 and 21.12.2022 and she filed several petitions under Section 317 Cr.P.C., Finally, on 21.12.2022 also she filed Section 317 Cr.P.C., petition. So, the petition was dismissed. Thereafter, the trial Court has issued a non-bailable warrant on 21.12.2022. Even after that, the respondent police have not taken action to secure the accused.

3.Hence, this Court is hereby issues a direction to the Superintendent of Police, Dindigul, to appear before this Court, on 13.07.2023 and give explanation for non-execution of non-bailable warrant issued against the accused.

Post this matter on 13.07.2023.”



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5.1. As per the direction of this Court, on 13.07.2023, the Superintendent of Police, Dindigul, appeared before this Court and stated that he received the non-bailable warrant only on 02.05.2023. Thereafter, he issued a Look Out Circular. He also assured to secure the accused.

5.2. The Superintendent of Police, Dindigul also produced the details of non-bailable warrant received, executed and recalled. The report of the Superintendent of Police, Dindigul, is as follows:

NBW – Received & Executed during the month of June 2023

Name of the PS	JM Court				Session Court			
	No. of NBWs pending at 01.05.2023	No. of NBWs received during the Month	No. of NBWs Executed / Recalled during the Month	Pending as on 30.06.2023	No. of NBWs pending at 01.05.2023	No. of NBWs received during the Month	No. of NBWs Executed / Recalled during the Month	Pending as on 30.06.2023
TOWN	222	30	44	198	23	19	14	39
RURAL	31	46	60	39	23	6	11	15
NKT	52	41	41	52	2	15	15	2
PALANI	18	6	4	46	3	3	3	3
DDC	161	12	16	97	8	1		7
KKL	65	11	13	16	1	1		1
VEDASANDUR	62	8	19	72	16	1		27
DCF	23	4	4	29	2			2
ALUSC	0			0	-			
Grand Total	673	144	207	612	40	46	43	77

5.3. Further, the Superintendent of Police, Dindigul, made a submission that the office of the Director General of Police issued a Circular relating to the



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execution of the non-bailable warrant in R.C.No.123026/Crime.4(3)/2018 dated 26.07.2018. The same is extracted as follows:

Rc.No.123026/Crime.4(3)/2018

Office of the
Director General of Police,
Tamil Nadu, Chennai-4.
Dated: 26.07.2018.

CIRCULAR MEMORANDUM

Sub: Police - Directions of the Hon'ble Madurai Bench of Madras High Court in Cri.OP(MD) No.11139 of 2018 filed by A.V.Vijayaragavan - regarding the long pending NBWs - Instructions issued - Regarding.

Ref: Letter in Ref.No.25/2018/AAG-III, dated 25.07.2018 of the Addl. Advocate General-III, Tamil Nadu, Madurai Bench of Madras High Court, Madurai.

The Additional Advocate General-III of Madurai Bench of Madras High Court in his letter cited has informed that, the Hon'ble Mr.Justice D.Krishnakumar, while hearing the matter on NBWs pending in large numbers and issued the following directions.

- The details about NBW cases should be reviewed by the Assistant Superintendent of Police / Deputy Superintendent of Police in each District once in a week and submit a report to the concerned Inspector General of Police.
- The Inspector General of Police should review the matter on the basis of the report submitted by the Assistant Superintendent of Police / Deputy Superintendent of Police.
- The Inspector General of Police after reviewing the matter should submit a report to the Director General of Police who will peruse and issue direction.
- The Court also directed the Director General of Police to issue a Circular in this connection.

2) Hence, all the Inspectors General of Police in Zones and Superintendents of Police in Districts are directed to give suitable instructions to all ASPs/DSPs in their Zones and Districts that the directions of the Hon'ble High Court should be followed in letter and spirit without any deviation.

3) Receipt of the circular memorandum should be acknowledged.

To
All Inspectors General of Police in Zones.
All the Superintendents of Police in Districts.

P/C
Director General of Police.

Asst. Inspector General of Police, Law & Order, Mylapore, Chennai - 4.



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5.4. Following the above Circular, the Superintendent of Police, Dindigul, instructed the concerned jurisdictional police officers to receive the non-bailable warrants issued by various Courts and execute the same without any delay. He further submitted that the Department also executed more than 60% of the non-bailable warrants. The Superintendent of Police, Dindigul further undertakes to execute the non-bailable warrants before the date fixed by the jurisdictional Court. The said submission of the Superintendent of Police is appreciated by this Court.

5.5. This Court hereby directed the Superintendent of Police, Dindigul, to execute the non-bailable warrants issued by the jurisdictional Courts without any delay.

6. The learned Senior Counsel appearing for the petitioner submitted that the petitioner has already filed an affidavit of undertaking that she shall appear before the trial Court and ready to cooperate with the trial. The relevant paragraph of the affidavit reads as follows:

“ 4. I hereby undertake that I will return to India on or before 05.08.2023 and co-operate with the respondent police for the completion of Trial in C.C.No.16 of 2023 pending on the file of the learned Judicial Magistrate Court No.II, Dindigul without



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default and I undertake to appear before the Trial Court as and when required by the learned Magistrate without fail for trial . I will not seek unnecessary adjournment or protract or delay the trial. Hence, it is just and necessary to recall the Non-Bailable Warrant, dated 21.12.022 issued against me by the learned Judicial Magistrate Court No.II, Dindigul. ”

7. On perusal of the above affidavit, it was seen that the petitioner does not disclose the period of Visa. So, this Court directed the learned Senior Counsel to obtain suitable instructions. Today, the learned Senior Counsel on instructions submitted that the petitioner shall go to the USA after completion of the trial. He also submitted that as on date, the prosecution examined six witnesses and the said six witnesses did not depose against the involvement of the petitioner in the crime. The learned Senior Counsel further submitted that the petitioner is ready to appear before the trial Court on 07.08.2023. He further assured that the petitioner shall cooperate for the speedy disposal of the trial.

8. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that this Court issued direction to split up the case in C.C.No. 298 of 2016 as against the petitioner alone and directed to continue the trial for the remaining accused. Accordingly, C.C.No.298 of 2016 was split up and C.C.No.16 of 2023 was assigned as against the petitioner. In the mother C.C.No.



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298 of 2016, the prosecution already examined six witnesses and remaining 10 more witnesses are yet to be examined. For further examination of the witnesses, the case was posted on 19.07.2023. He further submitted that since the petitioner has not appeared number of hearings, the learned trial Judge rightly issued the non-bailable warrant. Now the petitioner undertakes to appear before the Court and hence, this Court directs the trial Court to follow the procedures contemplated under Rule 32 of the Criminal Rules of Practice, 2019.

9. According to the learned Senior Counsel, the petitioner's daughter is studying in USA and hence, she is unable to appear before the trial Court in earlier number of occasions. The submission of the learned Senior Counsel is that the absence of the petitioner is neither wilful nor wanton, but for the bonafide reasons as stated above. The said submission of the learned Senior Counsel is placed on record.

10. Considering the submission of the learned Senior Counsel that the accused is ready to appear before the trial Court on 07.08.2023, in the interest of all the parties to the proceedings and also considering the submission of the learned Additional Public Prosecutor that the trial Court posted the case for



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examination of remaining witnesses on 19.07.2023, this Court is inclined to pass the following order:

(i) The petitioner's undertaking affidavit sworn in USA before the Notary Public, dated 30.06.2023, shall form part of record of this case.

(ii) The petitioner is directed to appear before the trial Court on 07.08.2023 with undertaking affidavit that she shall regularly appear in the Court and co-operate with the trial proceedings in C.C.No.16 of 2023 pending on the file of the Judicial Magistrate No.II, Dindigul. The learned trial Judge shall permit the petitioner to participate in the trial proceedings without insisting recall of Non Bailable Warrant issued on 21.12.2022.

(iii) The learned trial Judge is directed to postpone the date of examination of the witnesses scheduled on 19.07.2023 to 07.08.2023. On that day, after receiving the undertaking affidavit from the petitioner, the learned trial Judge shall frame the charges in C.C.No.16 of 2023 and examine the remaining witnesses by clubbing C.C.No.298 of 2016 & C.C.No.16 of 2023 and permit the petitioner to cross-examine the witnesses and proceed the trial in accordance with law.

(iv) The learned trial Judge is directed to complete the trial within 30 days from 07.08.2023.



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11. In view of the above directions, this Court is hereby stayed the operation of Non Bailable Warrant issued by the learned Judicial Magistrate No.II, Dindigul, dated 21.12.2022. Further, issuance of the Look Out Circular on the basis of the Non Bailable Warrant issued by the learned Judicial Magistrate No.II, Dindigul, dated 21.12.2022 is also kept in abeyance.

12. In view of the submission made by the learned Senior Counsel that there was no incriminating materials deposed by PW.1 to PW.6, the petitioner is at liberty to make the submission on the basis of the recorded evidence of PW.1 to PW.6. If any request made on behalf of the petitioner to cross-examine the said witnesses, the trial Court shall give such opportunity.

13. With the above direction, this Criminal Revision Case is disposed of. Consequently, the connected Miscellaneous Petition is closed.

17.07.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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Note : Issue order copy on 19.07.2023.



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To

1. The Judicial Magistrate Court No.II,
Dindigul.
2. Inspector of Police,
District Crime Branch,
Dindigul.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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CrI.RC(MD)No.591 of 2023 and
CrI.M.P(MD).No.8564 of 2023

17.07.2023