



Crl.O.P(MD)No.15897 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON: 07.09.2023

ORDERS PRONOUNCED ON: 22.09.2023

CORAM

THE HONOURABLE DR.JUSTICE D.NAGARJUN

Crl.O.P(MD)No.15897 of 2023

Tmt.Padmavathy

... Petitioner

Vs

M/s.Sri Balaji Networks,
Rep. through it Managing Partner,
Mr.P.Venkatachalapathy,
BS-3, SIDCO Industrial Estate,
Kappalur,
Madurai-8.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the docket order dated 24.08.2023 issuing Non-Bailable Warrant against the petitioner in S.T.C.No.4 of 2022, on the file of the learned Fast Track Court No.I (Judicial Magistrate level) Madurai by allowing the Criminal Original petition.

For Petitioner : Mr.M.K.Subramanian

For Respondent : Mr.S.Srikanth



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ORDER

This petition is filed seeking to set aside the docket order dated 24.08.2023 issuing Non-Bailable Warrant against the petitioner/accused in S.T.C.No.4 of 2022, on the file of the Fast Track Court No.I, (Judicial Magistrate Level), Madurai.

2. The learned counsel for the petitioner submitted that the petitioner could not appear before the trial Court on 24.08.2023, and filed an application under Section 317 Cr.P.C., for dispensing with the presence of the petitioner/accused. However, the said petition was dismissed and Non-Bailable Warrant was issued.

3. The learned counsel appearing for the respondent submitted that the petitioner never in the habit of appearing for the trial Court and so far she has appeared only three or four hearing before the trial Court and on account of absence of the petitioner, delay is being caused in proceedings with the case.



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4. The petitioner has not submitted any cogent reasons for not appearing before the trial Court on 24.08.2023. The petitioner being an accused is expected to appear before the Court whenever the case is posted, in case, if the accused failed to appear and reasons are given the trial court is expected to dispense with the presence of the petitioner. There is no record as to whether the petitioner has mentioned any reason as why she could not appear before the trial Court on 24.08.2023. So far as this petition is concerned except making formal prayer, the petitioner has not given any reason for not appearing before the trial court on 24.08.2023 and why this Court intervention is required.

5. Further, even if the Non-Bailable Warrant was issued under Section 70(1) of Cr.P.C., the petitioner expect to file an application under Section 70(2) Cr.P.C., for recalling of the warrant before the executing court, however, no attempt is made by the petitioner. It is for the trial court which has got the control over the facts of the case and the trial Court able to assess as to whether the petitioner has deliberately absent or really any unavoidable circumstances she could not able to appear before the court. Therefore, the petitioner should have filed an application under Section 70(2) of Cr.P.C., before the trial Court. Further in order to set aside the order passed by the trial Court dated 24.08.2023, the petitioner has to explain as to what irregularity committed by the trial Court. Dismissal of application under Section 317



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Cr.P.C., is purely the discretion of the trial court basing on the circumstances prevailing and on account of the reasons explained by the petitioner before the trial Court, the trial Court has taken conscious decision to dismiss the application. Considering the above discussion, when the petitioner without filing the application under Section 70(2) of Cr.P.C., has approached this Court and filed this application without any ground.

6. Accordingly, this Court find no reason to interfere with the order of the trial Court and hence, this Criminal Original Petition is dismissed.

22.09.2023

NCC:yes/no
Index:yes/no
Internet:yes/no
am

To

Fast Track Court No.I (Judicial Magistrate level) Madurai



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DR.D.NAGARJUN, J.

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22.09.2023