



Crl.O.P.(MD) No.18965 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.18965 of 2023

R.Uma Rani

...Petitioner / Petitioner / Appellant

Vs.

P.Ramesh

...Respondent / Respondent / Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to direct the Learned Judicial Magistrate (Fast Track), Uthamapalayam, Theni District to consider the petition filed to recall the Non Bailable Warrant issued on 11.07.2023 in C.C. No.5 of 2018, on the same day of it's filing without insisting the presence of the petitioner.

For Petitioner :Mr.A.S.Abul Kalaam Azad

ORDER

This petition is filed seeking direction to the Learned Judicial Magistrate (Fast Track), Uthamapalayam, Theni District to consider the petition filed to recall the Non Bailable Warrant issued on 11.07.2023 in C.C. No.5 of 2018, on the same day of it's filing without insisting the presence of the petitioner.



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2.Originally the petitioner was convicted and sentenced to undergo 6 months S.I. and to pay a sum of Rs.2,00,000/-. Against the above said conviction, this petitioner preferred an appeal before the Principal District Judge, Theni, in CrI.A.No.51 of 2023. During the pendency of the above said appeal, he moved Cr.M.P.No.2367 of 2023 before the Appellate Court, seeking suspension of sentence, that was also ordered with conditions. One of the conditions is that the petitioner was ordered to deposit a sum of Rs.40,000/-. That was also complied by the petitioner and other condition is that he must be appeared before the trial Court on every first working day of the calender month till the disposal of the appeal. The above said order is dated 08.07.2022. After that, he was appearing before the trial Court regularly. But on first July, 2023, he could not appear, because his father in law was admitted in Emergency/Critical Care. He appeared before the Court on the next working day, ie., 03.07.2023, instead of first July. In the mean time, warrant was issued by the trial Court against him.



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3. Seeking cancellation of the above said order, he moved an application on 31.08.2023 and that was returned stating that this petition is not maintainable. Thereafter, he moved copy application before the trial court and the same was returned by the trial Court on 06.10.2023.

4. Now the grievance of the petitioner is that he is not in a position to appear before the court, because of the above said warrant. Only the appellate Court is competent to entertain any warrant to recall application, even though the order has been issued by the trial court.

5. He also relied upon the Judgment passed by the Honourable Supreme Court in the case of ***Surinder Singh Deswal Vs. Virender Gandhi @ Anr.*** in ***Criminal Appeal Nos.1936 to 1963 of 2019*** drawing attention of this Court to Para No.19 it appears that the Appellate Court ought to have entertained this petition for recall. Para No.19 reads as under;

19. It is for the Appellate Court who has granted suspension of sentence to take call on non-compliance and take appropriate decision. What order is to be passed by



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the Appellate Court in such circumstances is for the Appellate Court to consider and decide. However, non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated.

6.In view of the above said decision made by the Honourable Supreme Court, there shall be a direction to the Appellate Court namely Principal District Judge, Theni, to entertain the warrant and recall application and decide the same on its own merits. Since the original petition is available with the petitioner, he can represent the same before the Appellate Court.

7.With the above directions, this Criminal Original petition is disposed of.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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To

- 1.The learned Principal District Judge,
Theni.
- 2.The learned Judicial Magistrate (Fast Track),
Uthamapalayam,
Theni.



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