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Crl.R.C.No.454 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.454 of 2024

Jayabalan Murali Manohar,
Director,
Mediasone Global Entertainment Ltd.,
No.AA17, 3rd Street,
Anna Nagar, Chennai – 600 040.

... Petitioner

Vs.

M/s.AD Bureau Advertising Pvt. Ltd.,
Rep. By Managing Director,
Mr.Abirchand Nahar,
No.781, Mount Road,
Rayala Tower, Chennai – 600 002.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order dated 06.01.2024 in Crl.M.P.No.1113 of 2024 in C.C.No.3082 of 2015 on the file of the learned Metropolitan Magistrate, Fast Track Court-I, Egmore at Allikulam and consequently allow Crl.M.P.No.1113 of 2024 in C.C.No.3082 of 2015 on the file of the learned Metropolitan Magistrate, Fast Track Court-I, Egmore at Allikulam.

For Petitioner : Mr.T.Saikrishnan



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ORDER

The petitioner/A3 in C.C.No.3082 of 2015 facing trial for the offence under Section 138 of the Negotiable Instruments Act filed a petition before the Trial Court to recall Non-Bailable Warrant under Section 70(2) Cr.P.C. in Crl.M.P.No.1113 of 2024 before the learned Metropolitan Magistrate, Fast Track Court-I, Egmore at Allikulam, which came to be dismissed by order dated 06.01.2024. Against which, the present revision petition is filed.

2.The contention of the learned counsel for the petitioner is that the Trial Court had wrongly appreciated and dismissed the petitioner under Section 317 Cr.P.C. in Crl.M.P.No.39600 of 2023 in C.C.No.3082 of 2015 on 07.09.2023 and thereafter, Non-Bailable Warrant was issued based on the judgment of conviction in C.C.No.5702 of 2016 which was confirmed in C.A.No.199 of 2021 by the Sessions Court. He would submit that the Trial Court failed to consider that as against the judgment dated 04.08.2023 in C.A.No.199 of 2021, the petitioner preferred a revision before this Court in Crl.RC.No.1636 of 2023 along with suspension of sentence petition in



Crl.M.P.No.15419 of 2023 and this Court suspended the sentence on 26.09.2023. The Trial Court ought to have considered this fact on 06.01.2024 when the recall petition was filed to recall NBW issued on 07.09.2023. Further, the petitioner due to his health condition was unable to physically appear before the Trial Court and he had also produced the medical records which was also not considered. Further, the Trial Court failed to consider that quash petition was pending before this Court in Crl.O.P.Nos.30327, 30326, 29698 of 2015 and 246 of 2016 which was disposed of only on 16.12.2021 and for this reason, there was some delay which cannot be viewed against the petitioner. He further submitted that the Trial Court in the impugned order had primarily referred to the other proceedings against the petitioner and Non-Bailable warrant was pending against him. He would submit that the recall petition was dismissed primarily on the ground that the case has been kept pending for years and the petitioner has been dragging on the trial. He further submitted that the petitioner is a sick person and his health condition does not permit him to stand for a long time or move out often. The medical records have not been considered and adverted by the Trial Court. A business transaction has been given a criminal colour and the petitioner is facing trial for bailable offence



under Section 138 of the Negotiable Instruments Act.

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3.This Court considered the submissions made on behalf of the petitioner and it is seen that the petitioner is facing trial for the offence under Section 138 of the Negotiable Instruments Act. The petitioner is involved in Media industry and was involved in the post production work of a film, due to which there was some financial transaction between the petitioner Company Mediasone Global Entertainment Limited and the respondent M/s.AD Bureau Advertising Private Limited and due to some reason, the project could not come out successfully, there was some claim and counter claim between them and a case under Section 138 of NI Act filed.

4.The Apex Court in the case of ***Bhaskar Industries Limited vs. Bhiwani Denim & Apparels Limited and others*** reported in ***2001 SCC (Cri) 1254***, observed that personal attendance of an accused before Criminal Court in summons case, such as one involving offence under Section 138 of Negotiable Instruments Act, if it appears to the Court that personal attendance may result in enormous hardship and cost to an accused, the



Court may dispense with his personal attendance either throughout or at any particular stage of the proceedings, after taking an undertaking from him that he would not dispute his identity as the particular accused in the case and that a counsel on his behalf would be present in Court and he would have no objection in taking evidence in his absence. The main concern of the Court is administration of criminal justice and for that purpose, the Court proceeding should register progress. It also gone to the extent of stating that if the attendance of the accused is dispensed with, the Magistrate can record the plea of the accused. At this juncture, it is appropriate to extract the relevant paragraphs:

“17.Thus, in appropriate cases the magistrate can allow an accused to make even the first appearance through a counsel. The magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. Section 317 of the Code has to be viewed in the above perspective as it empowers the court to dispense with the personal attendance of the accused (provided he is represented by a counsel in that case) even for proceeding with the further steps in the case. However, one precaution which the court should take in such a situation is that the said



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benefit need be granted only to an accused who gives an undertaking to the satisfaction of the court that he would not dispute his identity as the particular accused in the case, and that a counsel on his behalf would be present in court and that he has no objection in taking evidence in his absence. This precaution is necessary for the further progress of the proceedings including examination of the witnesses.

18.A question could legitimately be asked - what might happen if the counsel engaged by the accused (whose personal appearance is dispensed with) does not appear or that the counsel does not co-operate in proceeding with the case? We may point out that the legislature has taken care for such eventualities. Section 205(2) says that the magistrate can in his discretion direct the personal attendance of the accused at any stage of the proceedings. The last limb of Section 317(1) confers a discretion on the magistrate to direct the personal attendance of the accused at any subsequent stage of the proceedings. He can even resort to other steps for enforcing such attendance.

19.The position, therefore, bogs down to this: It is within the powers of a magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of



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such proceedings in a summons case, if the magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations to him, and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to the far distance at which the accused resides or carries on business or on account of any physical or other good reasons the magistrate feels that dispensing with the personal attendance of the accused would only be in the interests of justice. However, the magistrate who grants such benefit to the accused must take the precautions enumerated above, as a matter of course. We may reiterate that when an accused makes an application to a magistrate through his duly authorised counsel praying for affording the benefit of his personal presence being dispensed with the magistrate can consider all aspects and pass appropriate orders thereon before proceeding further.”

5.In this case, the accused is not shying away from the case and he is ready to proceed with the case. His only plea is that his health condition is such that his movements are restricted and for that reason, he has filed a petition under Section 70(2) Cr.P.C. In view of the above, this Court finds



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that the order passed by the Trial Court dismissing the petition filed by the petitioner is not proper. Hence, the Non-Bailable Warrant issued against the petitioner is recalled but subject to the petitioner filing an affidavit that he has got no objection to record evidence in his absence, his counsel will represent the petitioner and he would not be a reason for further delay.

6. Accordingly, the Criminal Revision Petition stands allowed and the order passed by the learned Metropolitan Magistrate, Fast Track Court-I, Egmore at Allikulam in Crl.M.P.No.1113 of 2024 in C.C.No.3082 of 2015 dated 06.01.2024 is set aside.

13.03.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

cse

Note: Issue order copy on 19.03.2024

To

The Metropolitan Magistrate,
Fast Track Court-I,
Egmore at Allikulam.



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M.NIRMAL KUMAR, J.

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