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CrI.R.C.No.2044 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2023
PRONOUNCED ON : 31.01.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.2044 of 2023

Sathiya @ Sathiyaraj.R.

... Petitioner

Vs.

The State,
Rep. by Inspector of Police,
Mayiladhuthurai Police Station.
(Crime No.703 of 2005).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order, dated 23.11.2023 made in Cr.M.P.No.2256 of 2023 in S.C.No.274 of 2008 on the file of the District and Sessions Judge, Mayiladuthurai by allowing the above Revision Petition.

For Petitioner : Mr.R.C.Paul Kanagaraj for
Mr.D.Alexis Sudhakar
For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

Challenging the impugned order, dated 23.11.2023 made in Cr.M.P.No.2256 of 2023 in S.C.No.274 of 2008 passed by the learned District and Sessions Judge, Mayiladuthurai (trial Court), this Criminal



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Revision Case has been filed.

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2.The facts relating to decide the present Criminal Revision Case is as follows:

2.1.In S.C.No.274 of 2008, the alleged occurrence is said to have taken place in the year 2005 and there are five accused. During trial, the case against A1, A2 and A4 was split up in S.C.No.85 of 2011, as a result, A1 (A3 as per charge sheet) and A2(A5 as per charge sheet) are accused in S.C.No.274 of 2008. The trial Court framed charges against the petitioner/A1 and A2 for the offence under Sections 120(b) r/w 302 and 302 r/w 34 of IPC in S.C.No.274 of 2008. During trial, the petitioner not appeared before the trial Court, hence, NBW issued against the petitioner on 15.07.2010 and the same was pending till 2013. On 13.03.2013, the petitioner was produced under PT warrant and thereafter, released on bail. Again, on 20.06.2013, NBW issued against the petitioner, but the petitioner was granted anticipatory bail in Crl.O.P.No.3545 of 2016 on 29.02.2016. In the year 2018, the petitioner was produced under PT warrant and on 04.06.2018, he was released on bail. Again, on 25.09.2019, petitioner not appeared before the trial Court and NBW was issued. On 30.07.2019, the



petitioner appeared and NBW was cancelled. Thereafter, during the COVID-19 pandemic, no progress of the case. On 07.04.2022, NBW was pending against the petitioner and the petitioner surrendered on 22.07.2022. As per the order of this Court, NBW was recalled. Again on 01.09.2022, the petitioner not appeared in person and petition under Section 317 Cr.P.C., filed and the same was dismissed and the Court issued NBW against the petitioner.

2.2. Thereafter, the petitioner filed anticipatory bail under Section 438 Cr.P.C., before this Court in Crl.O.P.No.13779 of 2023 to recall the NBW issued on 01.09.2022 in S.C.No.274 of 2008. This Court vide order, dated 28.06.2023 disposed the Criminal Original Petition directing the petitioner to surrender before the trial Court and file a petition under Section 70(2) of Cr.P.C., to recall NBW. As per the order of this Court, a petition under Section 70(2) of Cr.P.C., filed before the trial Court in Cr.M.P.No.2256 of 2023 in S.C.No.274 of 2008 and the trial Court *vide* impugned order, dated 23.11.2023 dismissed the petition finding that the petitioner is in the habit of not appearing before the trial Court and filing petition under Section 317 Cr.P.C., and also considering the long pendency of the case. Challenging



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the same, the present Criminal Revision Case has been filed.

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3.The learned counsel for the petitioner submitted that the petitioner has filed two petitions, dated 23.11.2023 under Section 70(2) of Cr.P.C., before the trial Court to recall two NBWs issued on 01.09.2022 in S.C.No.274 of 2008 and on 18.08.2022 in S.C.No.52 of 2019 by surrendering himself in the light of the orders passed by this Court in Crl.O.P.No.13779 of 2023 in S.C.No.274 of 2008, dated 28.06.2023 and in Crl.O.P.No.13985 of 2023 in S.C.No.52 of 2019, dated 27.06.2023. The trial Court allowed one recall petition filed in S.C.No.52 of 2019 and dismissed the other one which was filed on the same day for recalling the warrant in S.C.No.274 of 2008 by passing the impugned order, dated 23.11.2023. He further submitted that the trial in the split up case conducted against the other accused in S.C.No.85 of 2011 ended in acquittal with the observation that the deceased person had several motives and enmity which was not properly unearthed by the prosecution agency and the witnesses produced by the prosecution does not inspire confidence of the trial Court. Due to such reason, the prosecution not produced any witnesses for conducting the trial against the petitioner and another in S.C.No.274 of



2008, hence, the non-appearance of the petitioner is not all reason for delay.

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4.The learned counsel further submitted that for the past two years, the petitioner has been undergoing natural ayurvedic treatment in Kerala periodically and he used to appear before the trial Court as and when necessary for the progression of the trial and in other dates, his counsel is appearing without absent. The only reason for the delay is that the prosecution was always afraid that the case may end up in acquittal following the result of the split up case against the co-accused (A1, A2 & A4). Even on the date of the petitioner's absence, no witness was produced by the prosecution which the trial Court failed to consider the same. In support of his submissions, the learned counsel for the petitioner relied on the decisions of this Court in the cases of *Deivasigamani and another Versus The State in Crl.R.C.No.1665 of 2002, dated 11.10.2002* and *P.A.Saleem and Ors., Versus State and anr.*, reported in *1994 (3) Crimes 991*.

5.*Per contra*, the learned Additional Public Prosecutor appearing for the respondent Police filed status report stating that the petitioner is an



History Sheet Rowdy in H.S.No.381 of 2011 maintained by the Sirkazhi Police Station and he is under surveillance of Organized Crime Intelligence Unit. As per the order of this Court, dated 28.06.2023 in Crl.O.P.No.13779 of 2023, the petitioner has filed a petition under Section 70(2) of Cr.P.C., to recall the NBW before the trial Court and the trial Court rightly dismissed the same remanding the petitioner. He further submitted that the petitioner is under ayurvedic treatment for Jaundice in Kerala is not proper since no medical records produced by him either before the trial Court or before this Court. The contention of the petitioner that the delay in progress of the trial is due to non production of witnesses by the prosecution agency is not proper. Further, the pending cases and disposal cases against the petitioner are listed in the status report and the particulars of present and absent of the petitioner before the trial Court are also tabulated.

6.He further submitted that the petitioner is in the habit of not appearing before the trial Court and is in the habit of filing petition under Section 317 Cr.P.C., frequently without any valid reason. If the NBW is recalled, the petitioner will abscond and never appear before the trial Court and thereby, the case which is of the year 2005, will not reach its logical



end. Hence, prays for dismissal of the Criminal Revision Case. In support of his submissions, the learned Additional Public Prosecutor relied on the decision of the Hon'ble Apex Court in the case of “***Pankaj Jain Versus Union of India and another*** reported in ***(2018) 5 SCC 743*** and decision of this Court in the case of ***Sanjeev Narula and another Versus The State in Crl.O.P.No.16750 of 2018, dated 29.06.2018.***”

7.Considering the submissions and on perusal of the materials, it is seen that in this case, the occurrence had taken place in the year 2005, charge sheet filed in the year 2006 and in the year 2007, NBW issued against the petitioner and he was remanded. Subsequently, on 19.08.2008, on production of the petitioner, copies furnished to him. On 19.09.2008, the case was taken up by the Sessions Court in S.C.No.274 of 2008. Initially, there was five accused, the case against three of them was split up and S.C.No.52 of 2019 assigned. Now, the present case is the parent case which is still pending without any progress due to non appearance of the petitioner. Earlier, the petitioner approached this Court and obtained favourable orders recalling NBW. Subsequently, he absconded himself and the progress of the trial stalled.



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8.From the counter, it is seen that there are nine cases including the above case, which are pending trial against the petitioner. The case against the petitioner starts from the year 2002 and one more case is yet to be taken on file. As regards the above case is concerned, as could be seen from the impugned order, it is seen that 92 hearings have been gone till 14.05.2023, but there is no substantial progress in the trial. After the impugned order, now the case is progressed and witnesses are examined. This progress of trial is only after the dismissal of recall petition and remand of the petitioner.

9.Considering the trajectory of the case and also finding that as a matter of routine, the petitioner has been absenting himself and he is in the habit of filing recall petitions, this Court is not inclined to interfere with the impugned order, dated 23.11.2023 in Cr.M.P.No.2256 of 2023 in S.C.No.274 of 2008 passed by the trial Court.

10.Accordingly, this Criminal Revision Case stands dismissed.



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31.01.2024

Index: Yes/No

Internet: Yes/No

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

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To

1.The District and Sessions Judge,
Mayiladuthurai.

2.The Inspector of Police,
Mayiladhuthurai Police Station.

3.The Public Prosecutor,
Madras High Court.

M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
CrI.R.C.No.2044 of 2023



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