



Crl.O.P.(MD)No.15377 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

Crl.O.P.(MD)No.15377 of 2021

1.Bhakdhavakchalam
2.Ambikabhai

... Petitioners

VS.

The Inspector of Police,
Kazhiyakavilai Police Station,
Kanyakumari District.
(Crime No.592 of 2013)

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to set aside the Non-Bailable Warrant (NBW) issued against petitioners on 27.05.2019 in C.C.No.123 of 2017 on the file of the Judicial Magistrate, Valliyoor.

For Petitioners

:Mr.P.M.Vishnuvarathanan

For Respondent

:Mr.R.M.Anbunithi,
Additional Public Prosecutor (Crl. Side)



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ORDER

The present petition is filed to set aside the Non-Bailable Warrant issued against the petitioners on 27.05.2019 by the Judicial Magistrate, Valliyoor in C.C.No.123 of 2017.

2. The grievance of the petitioners is that though C.C.No.231 of 2015 on the file of the Judicial Magistrate No.1, Kuzhithurai was transferred to the file of the Judicial Magistrate, Valliyoor as per the directions of this Court and re-numbered as C.C.No.123 of 2017, the Judicial Magistrate, Valliyoor did not send any notice to the petitioners and subsequently, a Non-bailable Warrant was issued against them.

3. Mr.P.M.Vishnuvarathanan, learned counsel appearing for the petitioners contended that since the Judicial Magistrate, Valliyoor failed to issue notice after transfer of the entire case bundle, the Non-Bailable Warrant issued by the said Court is not sustainable.



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4. *Per contra*, Mr.R.M.Anbunithi, learned Additional Public Prosecutor contended that the Judicial Magistrate, Valliyoor had rightly issued the Non-Bailable Warrant and therefore, no interference is called for by this Court.

5. A perusal of the records shows that the defacto complainant in fact had filed Crl.O.P.No.11784 of 2016 before this Court and this Court vide orders dated 15.07.2016 transferred C.C.No.231 of 2015 from the file of the Judicial Magistrate No.1, Kuzhithurai to the file of the Judicial Magistrate, Valliyoor mainly on the ground that the first petitioner / first accused is a practicing lawyer in Kuzhithurai and there is no conducive atmosphere for the defacto complainant to get along with the trial. Therefore, the case was transferred to the file of the Judicial Magistrate, Valliyoor. Diary extract says that the present petitioners / accused had actually surrendered before the Judicial Magistrate No.1, Kuzhithurai on 30.06.2015 and were enlarged on bail on the same day and the petitioners were in know of pendency of C.C.No.231 of 2015 and the first petitioner is a practicing lawyer in Kuzhithurai. Therefore, the



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contention of the first petitioner that he did not know the transfer of C.C.No.231 of 2015 from the file of the Judicial Magistrate No.1, Kuzhithurai to the file of the Judicial Magistrate, Valliyoor is unbelievable. Nevertheless the petitioners can file a petition under Section 70(2) of the Code of Criminal Procedure to re-call the warrant pending against them and the petitioners knew this provision of law and just for the sake of protracting the proceedings, they seem to have filed this Criminal Original Petition. In such facts and circumstances, I do not see any reason to set aside the Non-Bailable Warrant issued by the Judicial Magistrate, Valliyoor.

6. Accordingly, the Criminal Original Petition is dismissed.

05.01.2024

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NCC: Yes/No

Index : Yes/No

Speaking/Non-Speaking order



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To
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- 1.The Inspector of Police,
Kazhiyakavilai Police Station,
Kanyakumari District
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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R.HEMALATHA, J.

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