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Crl.R.C(MD)No.1389 of 2024



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.01.2025

Pronounced on : 07.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.1389 of 2024

and

Crl.M.P(MD)No.14059 of 2024

Thomas

... Petitioner

Vs.

The State of Tamil Nadu rep. by
The Inspector of Police,
Thiruvattar Police Station,
Thiruvattar.
Kanyakumari District.

... Respondent

PRAYER : This Criminal Revision Case has been filed under Sections 438 r/w 442 of BNSS, to call for the records and setaside the order in Crl.M.P.No.164 of 2024, dated 07.12.2024 on the file of the Assistant Sessions Judge, Padmanabhapuram in S.C.No.268 of 2017 and allow the revision petition.

For Petitioner : Mr.C.S.Lenin

For Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate (Crl.side)



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ORDER

This Criminal Revision Case is directed against the order, dated 07.12.2024 made in Crl.M.P.No.164 of 2024 in S.C.No.268 of 2017 on the file of the learned Assistant Sessions Judge, Padmanabhapuram and to set aside the same.

2.The brief facts of the prosecution case:

The petitioner is Accused No.1 in S.C.No.268 of 2017 on the file of the learned Assistant Sessions Judge, Padmanabhapuram. The case was taken on file for the alleged offences U/s.147, 148, 447, 294(b) and 506(2) of IPC and U/s.3(1) of the TNPPDL Act. The petitioner/Accused No.1 has been on bail. Charges were framed against the petitioner on 16.10.2024. Then, on 20.11.2024 on the prosecution side, L.W.1 and L.W.2 were examined in chief as P.W.1 and P.W.2. Since the petitioner/Accused No.1 was absent on 20.11.2024, petition U/s.317 of Cr.P.C. was filed, but the trial Court has not allowed that petition and issued NBW against the petitioner/Accused No.1. Hence, the petitioner/Accused No.1 has filed the petition U/s.70(2) of Cr.P.C. in Crl.M.P.No.164 of 2024 in S.C.No.268 of 2017 before the learned Assistant Sessions Judge, Padmanabhapuram and the same was dismissed on 07.12.2024.



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3. Aggrieved by the dismissal of the petition, the revision petitioner/petitioner/Accused No.1 has preferred this present Criminal Revision Case.

4. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the records in this Criminal Revision Case.

5. The learned counsel appearing for the revision petitioner has submitted that the petitioner is aged 62 years, and he is alone facing trial as Accused No.2 died and the charge against him was abated. It is a settled proposition that while recalling NBW the physical presence of the accused need not be insisted. The petitioner was suffering from age related problems, particularly spine problem and he was not able to move freely. In an earlier occasion on 21.08.2024, the trial Court dismissed the petition U/s.317 and remanded the petitioner/Accused No.1 and while he was in prison, he was admitted in the Government Medical College, Asaripallam, for the reason of chest pain and giddiness and took treatment for 5 days as inpatient and then the petitioner was granted bail on 30.08.2024. So, the petitioner is a patient and is affected by age related problems. The trial Court has not considered the earlier events



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and simply dismissed the petition to recall of NBW, which was issued on subsequent hearing. The petitioner is ready to appear regularly and to abide by any condition.

6. The learned Government Advocate (Crl.side) for the respondent objected and contended that the case was registered in the year 2012 and taken on cognizance in 2017. The charges were framed against the petitioner on 16.10.2024 and the petitioner was lastly granted bail on 30.08.2024 with the specific condition that he should appear on all hearings of the case and shall appear and sign before the trial Court twice a week on Monday and Friday. But, violating the condition, the petitioner was wantonly absent on the examination of L.W.1 and L.W.2 on the prosecution side. The petitioner's intention is to drag the proceedings, hence, this criminal revision case may be dismissed.

7. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner is Accused No.1 and is facing trial of case for the alleged offences U/s.147, 148, 447, 294(b) and 506(2) of IPC and U/s.3(1) of the TNPPDL Act. On perusal of the impugned order, it is clear that the L.W.1 and L.W.2 were examined in chief in the absence of the petitioner, who was prime accused/Accused No.1 in the case. It is a



settled position of law, the prosecution witnesses would not be examined in the absence of the accused.

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8. The petitioner states that he is aged 62 years and is having age related problems. He has also filed a photocopy of medical certificate issued by a doctor showing his ailment. Even last bail was also granted on medical grounds. However, for mere medical grounds, the sessions case could not kept idle for long years. Admittedly, the case was registered in 2012. After taking cognizance as sessions case in the year 2017, charges were framed on 16.10.2024 and the examination of witnesses was commenced on 20.11.2024. Now, on the petitioner's side, it is represented that the petitioner is ready to abide by any condition and ready to proceed with the case. Therefore, considering the above circumstances, this Court is inclined to allow this criminal revision case with conditions.

9. Accordingly, this Criminal Revision Case is allowed, and the order, dated 07.12.2024, passed in Crl.M.P.No.164 of 2024 in S.C.No.268 of 2017 before the learned Assistant Sessions Judge, Padmanabhapuram, is set aside.



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(i) The Non Bailable Warrant issued by the learned Assistant Sessions Judge, Padmanabhapuram on 20.11.2024, is recalled;

(ii) The petitioner/Accused No.1 shall appear in person on all hearing dates of the case in S.C.No.268 of 2017 before the learned Assistant Sessions Judge, Padmanabhapuram and to proceed with the case without fail. Consequently, the connected Miscellaneous Petition is closed.

07.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
VSD

To

- 1.The Assistant Sessions Judge,
Padmanabhapuram.
- 2.The State of Tamil Nadu rep. by
The Inspector of Police,
Thiruvattar Police Station,
Thiruvattar, Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
Crl.R.C(MD)No.1389 of 2024
and
Crl.M.P(MD)No.14059 of 2024

07.03.2025