



Crl.OP.No.35297 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2026

CORAM:

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.OP.No.35297 of 2025

and

Crl.MP.No.24845 of 2025

Christopher

...Petitioner

Vs.

Kalaiyaran

...Respondent

Criminal Original Petition filed under Section 528 of BNSS, 2023 to set aside the return of warrant recall petition in CMP.Sr.No.983 of 2025 in STC.No.191 of 2022, before the District Munsif cum Judicial Magistrate Court at Yercaud dated 14.10.2025.

For Petitioner : Mr.X.Selvam Sounder

ORDER

This criminal original petition has been filed seeking quashment of the docket order (return) dated 14.10.2025 passed in CMP.Sr.No.983 of 2025 in STC.No.191 of 2022 by the learned District Munsif cum Judicial Magistrate, Yercaud.



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2. The brief facts are as follows:

2.1 The petitioner is an accused facing trial in STC.No.191 of 2022 for the offence under Section 138 of the Negotiable Instruments Act, 1881 pursuant to the complaint filed by the respondent/complainant. The respondent/complainant alleged that the petitioner/accused borrowed a sum of Rs.7,00,000/- from him and in discharge of the said liability, issued a cheque bearing No.073300 dated 26.04.2022 drawn on Axis Bank, Tiruchirappalli Branch in his favour. The cheque, when presented by the respondent/complainant for collection, was dishonoured and hence, the respondent/complainant issued a legal notice. However, the petitioner/accused neither sent a reply to the legal notice nor repaid the cheque amount and hence, the complaint was filed.

2.2 While so, on 08.09.2022, Bailable Warrant was issued against the petitioner and subsequently, on 12.10.2023, Non Bailable Warrant was also issued against the petitioner. Upon knowing the same, the petitioner filed the present petition under Section 70(2) of Cr.P.C. However, the trial court, vide docket order dated 14.10.2025 returned the warrant recall petition in CMP.Sr.No.983 of 2025, without even numbering the same. Challenging the



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same, the instant criminal original petition has been filed by the petitioner/accused.

3. Learned counsel for the petitioner submitted that Section 70(2) of Cr.P.C. does not necessitate the presence of the petitioner/accused at the time of filing of an application for recall of warrant. However, the petitioner is ready to appear before the trial court and co-operate for speedy trial. Therefore, the learned counsel for the petitioner submitted that it would suffice if this Court issues direction to the Court concerned to consider and pass orders on the warrant recall petition on the same day of the petitioner's surrender.

4. This Court gave its careful consideration to the arguments advanced by the learned counsel for the petitioner and perused the materials available on record.

5. The facts in the present case are not in dispute. For better appreciation, the relevant portion of the impugned return docket order is extracted hereunder:



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“Return:

1. Accused not appear before Court till now. This NBW pending more than 2 years against accused. Hence, Accused First appearance must appearance necessary when recall the NBW.

2. To be furnished original (or) true Copy of medical certificate.

*3. Two sureties to be produced.
Hence Returned.”*

6. Admittedly, a Bailable Warrant was issued against the petitioner on 08.09.2022 and subsequently, on 12.10.2023, Non Bailable Warrant was also issued against the petitioner, despite which, instead of appearing before the trial court, the petitioner filed a warrant recall petition, which is not sustainable.

7. However, in view of the undertaking now given by the learned counsel for the petitioner that the petitioner will appear before the trial court and that he will co-operate in the trial proceedings, the impugned return docket order dated 14.10.2025 returning the un-numbered warrant recall petition in CMP.Sr.No.983 of 2025 in STC.No.191 of 2022 is set aside and the petitioner is directed to surrender before the trial court and file a warrant recall petition and also file an affidavit stating that he will co-operate for the



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speedy trial. If such application and affidavit are filed, the trial court shall consider the said recall petition and pass appropriate orders on the same day of the petitioner's surrender. Needless to state, the trial court shall follow the mandate prescribed under Section 143(3) of the Negotiable Instruments Act.

8. This criminal original petition stands disposed of accordingly. Consequently, the connected miscellaneous petition is closed.

05.01.2026

skt

To:

The District Munsif cum Judicial Magistrate Court,
Yercaud.



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