

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/08/2003

CORAM

THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL.O.P.NO.24895 OF 2001

AND

CRL.M.P.NO.8626 OF 2001

A.V.Bhaskaran .. Petitioner

-Vs-

N.Mohan

S/o Narayanan

Authorised Signatory

Divyanga Enterprises

8, Ganapathy II Street

Avvai Nagar

Thiruvanmiyur

Chennai-600 041 .. Respondent

This criminal original petition is preferred under Section 482 of Cr.P.C. to set aside the order dated 30.10.2001 of the learned Judicial magistrate No.2, Coimbatore in CMP No.8912 of 2001 in C.C.No.585 of 2001.

!For Petitioner : Mr.A.Raghunathan

^For Respondent : Service awaited

:ORDER

The petitioner herein aggrieved over the issuance of Non Bailable Warrant has brought forth this petition seeking to set aside the same.

2. From the averments made by the learned Counsel Mr.A.Raghunathan, a private complaint was lodged by the respondent under Section 138 of Negotiable Instruments Act. It was taken cognizance by the learned Judicial Magistrate, No.2, Coimbatore in C.C.No.585 of 2001 and the same is also pending.

According to the learned counsel for the petitioner, there were eight accused in this case. The petitioner herein was shown as A-6. The petitioner herein and the accused No.4 did not appear before the trial court on the first day and the counsel, who appeared for them, has filed an application under Section 317 of Cr.P.C. to condone their absence along with vakalat. Despite receipt of summons, he did not appear before the court on that day. The trial court instead of entertaining the application and condoning the delay, has dismissed

the same and issued Non Bailable Warrant. Hence, aggrieved over the petitioner has brought forth this petition.

3. Added further the learned counsel that a similar O.P. was filed by A-4 in Crl.O.P.No.24774 of 2001, which came before this Court and this Court by an order dated 20.6.2003 set aside the issuance of Non bailable warrant. As could be seen from the materials available, it was a case filed under Section 138 of N.I. Act stating that a cheque was issued by the first accused Company, where the other accused are the Directors and when the cheque was placed for encashment, the same was dishonoured. A statutory notice was issued and the non compliance of the demand made therein led the complainant to lodge a private complaint, which was taken cognizance by the trial court as referred to above.

4. As could be seen from the materials available and the submissions made by the learned counsel for the petitioner, though on the first day an application was filed under Section 317 of Cr.P.C. to condone the absence of A-6, the trial court has issued Non bailable warrant. It is pertinent to point out that six more accused were yet to be served summons to appear before the court. Under the stated circumstances, if the accused A-6 was present in Court, nothing would further progress in the matter.

5. Considering the facts and circumstances of the case, the Court is of the view that a direction has got to be issued to the petitioner to appear before the lower Court on or before 29.9.2003, and on that date, he shall file an application for recalling the warrant, and the lower Court shall pass orders withdrawing the said warrant on imposing some conditions to ensure the presence of the petitioner in the future hearings. Accordingly, a direction is issued. 6. It is stated that the matter is of the year 2001. Hence, the lower Court is directed to dispose of the case as expeditiously as possible.

7. With the above observation, this petition is disposed of. Consequently, connected Crl.M.P. is closed.

Index : Yes

Internet : Yes

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To

The Judicial Magistrate No.2
Coimbatore

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