

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

 Reserved on
 :
 06.10.2023

 Pronounced on
 :
 12.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.1105 of 2023 and Crl.M.P(MD)No.14125 of 2023

R.Sundar

WEB COPY

... Petitioner / Accused No.1

Vs.

The Sub Inspector of Police, Lalgudi Police Station, Lalgudi, Lalgudi Taluk, Trichy District. ... Respondent / Complainant

PRAYER : This Criminal Revision has been filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the order made in Cr.M.P.No.3123 of 2023 in C.C.No.95 of 2007 on the file of the Judicial Magistrate, Lalgudi, dated 26.09.2023.

For Petitioner	: Mr.Anantha Padmanabhan Senior Counsel for Mr.H.Jahir Hussain
For Respondent	: Mr.B.Nambi Selvan Additional Public Prosecutor



ORDER

EB COPY This Criminal Revision Case is filed against the fair order dated 26.09.2023 passed in Crl.M.P.No.3123 of 2023 in C.C.No.95 of 2007 on the file of the Judicial Magistrate Court, Lalgudi.

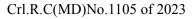
2. The brief facts of the case:

The revision petitioner is Accused No.1 in C.C.No.95 of 2007 on the file of the Judicial Magistrate Court, Lalgudi. A conditional order was passed directing the appearance of the petitioner on 12.09.2023, since the petitioner was unable to appear, NBW was issued against the petitioner. The petitioner filed warrant recall petition, but the Judicial Magistrate Court, Lalgudi, dismissed that already conditional order of appearance was passed, the petitioner did not appear and so, without appearance of petitioner/Accused No.1, NBW cannot be recalled. Aggrieved by the order, the revision petitioner has preferred this Criminal Revision Case.

3. Heard both side and perused the records in this Criminal Revision Case.



4. The learned counsel appearing for the revision petitioner has contended that the revision petitioner is Accused No.1 and he is a practicing advocate in this Court and hence, he has been filing the petition for dispense of his appearance before the Trial Court on all hearings. However, the Trial Court has passed a conditional order directing the petitioner to appear on 12.09.2023. Due to some unavoidable circumstances, he could not appear and he filed the petition for the same, but the Trial Court issued NBW against the petitioner. The petitioner filed the petition to recall NBW, but the Trial Court dismissed and held that without the presence of petitioner, NBW would not be recalled. In this case, there are NBWs pending against other accused, particularly Accused No.2, NBW is pending from 2013 and NBW is also pending against Accused No.3. Accused No.3 filed the petition on 12.09.2023 to recall NBW. It is a settled principle that for recalling NBW personal appearance need not be insisted upon as Section 205(1) of the Criminal Procedure Code, enables the Court to dispense with personal appearance. So, the impugned order may be set aside. In support of his argument the learned counsel relied on decision of this Court reported in (2016) 2 MLJ (Crl) 490 (Dr.Zubaida Begum /v/ State), wherein it is held in paragraph No.9 as follows:







"9.Earlier, when a petition is filed to recall NBW, surrender petition used to be filed and the accused should present/appear/surrender before the Court. Now, it has become obsolete. In fact, while sitting in Madurai Bench if Karuppiah @ Chinnathambi v. The Inspector of Police, Embal Police Station, AvudaiyarkoilTaluk, Pudukottai District 2014-2 L.W.(Crl.) 616, I have held that to recall NBW, the presence of the accused need not be insisted upon. Several decisions of this Court on similar lines are also available. The Trial Court simply ignored this settled position of law. Thus, the impugned order in Crl.M.P.No.1289 of 2015 must go."

5.The learned Additional Public Prosecutor for the respondent submitted that though the petitioner is a practicing advocate, he must obey the Court order. The petitioner has been directed to appear as he has not been appeared for several years. So, the impugned order is correct. This Criminal Revision Case may be dismissed.

6.On hearing both, it is clear that the revision petitioner is Accused No.1 in C.C.No.95 of 2007 on the file of the Judicial Magistrate Court, Lalgudi. Already NBW is pending against Accused No.2 from the year 2013. NBW was also pending against Accused No.3, who filed the https://www.mhc.tn.gov.in/judis



petition to recall NBW and the same was allowed on 12.09.2023. Admittedly the petitioner was directed to appear for hearing, but he filed the petition for dispense of his presence. On perusal of decision of this Court relied on by the petitioner, there is no wrong the presence of an accused for any effective hearing. On perusal of impugned order, there is nothing mentioned about any of effective hearing. Further, in the absence co-accused, no effective hearing can be made in the main case. This Court already held that while recalling NBW appearance of accused need not be insisted upon. At the same time, the accused has to be present when the case is posted for any effective hearing. In this case, when NBWs are pending against co-accused there would not be any effective hearing. However, it is stated that the petitioner has not been appearing before the Trial Court for several years, in such circumstance, there is nothing wrong in passing order for his appearance. In the above circumstances, this Court is inclined to allow this Criminal Revision Case with conditions by setting aside the impugned order.

7.In the result, this Criminal Revision Case is allowed and the order dated 26.09.2023 passed in Crl.M.P.No.3123 of 2023 in C.C.No.95 of 2007 on the file of the Judicial Magistrate Court, Lalgudi is set aside on condition that the criminal revision petitioner/Accused No.1 should



surrender before the learned Judicial Magistrate Court, Lalgudi within a week from the date of receipt of this order and to file a petition for recalling NBW under Section 70(2) of the Criminal Procedure Code. On such filing of application, the learned Judicial Magistrate, Lalgudi, is directed to entertain that application and to recall the NBW issued against the petitioner/Accused No.1. Consequently connected Miscellaneous Petition is closed.

12.10.2023

NCC : Yes / No Index : Yes / No Internet : Yes / No vsd

То

1.The Judicial Magistrate, Lalgudi.

 The Sub Inspector of Police, Lalgudi Police Station, Lalgudi, Lalgudi Taluk, Trichy District.

3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.





P.VADAMALAI, J.

vsd

Pre - Delivery Order made in Crl.R.C(MD)No.1105 of 2023 and Crl.M.P(MD)No.14125 of 2023

12.10.2023