

(2014) 11 MAD CK 0443

Madras High Court (Madurai Bench)

Case No: Crl. O.P. MD. No. 16411 of 2014

M. Selvam

APPELLANT

Vs

The Superintendent of Police

RESPONDENT

Date of Decision: Nov. 5, 2014

Acts Referred:

- Constitution of India, 1950 - Article 21
- Criminal Procedure Code, 1973 (CrPC) - Section 41
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2015) 1 MLJ(Cri) 142

Hon'ble Judges: P. Devadass, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

P. Devadass, J.

The petitioner, who is the complainant in a cheque bouncing case in S.T.C.No. 235 of 2012, came forward with this petition for a direction to the second respondent, the Inspector of Police, Karuppayurani Police Station, Madurai to execute the N.B.W. issued against the accused.

2. The learned counsel for the petitioner would submit that the third respondent received huge money and issued an useless cheque, in other words, without keeping sufficient amount in his bank account. Ultimately, it was dishonoured. Thus, the cheque bouncing case has been filed. In order to enforce the attendance of the accused, the learned Judicial Magistrate, Vadipatti issued non-bailable warrant, however, the police has not executed it.

3. On the other hand, the learned Government Advocate (Criminal side) would submit that actually non-bailable warrant has been issued to the Inspector of Police, Vadipatti and it is pending for execution.

4. It is a cheque bouncing case for an offence under Section 138 of the Negotiable Instruments Act. The offence is non-cognizable, but bailable.

5. One of the characteristic feature of a bailable offence is bail is "as a matter of right", jail is an exception, when the accused wish to continue to have the hospitality of the jail, in other words, he does not offer bail. Distinctive feature of a non-bailable offence is bail is "not as a matter of right, but before granting bail opportunity should be given to the prosecution". Thus, "non-bailable offence does not mean not bailable". It is also bailable provided opportunity should be given to the prosecution and it should be considered on merits. This is with regard to a bailable offence and a non-bailable offence.

6. The question is whether bailable offence under Section 138 of Negotiable Instruments Act, which is made bailable in the Act could be made non-bailable by issuing a non-bailable warrant.

7. A person could be sent to jail pursuant to a warrant of arrest also. But it should be also strictly in accordance with law. Otherwise it will militate against Article 21 of the Constitution of India. But Courts are having the power to enforce the attendance of the accused. If situation is such that issuance of bailable warrant will not workout, the accused is a mighty person, he has no regard for law, he is having unholistic alliance at every level including police and the Court must record a finding and in such circumstances if his attendance cannot be enforced by bailable warrant, then only it can consider issuance of non-bailable warrant. It should be after exhausting the procedure for enforcing the attendance, by the issuance of a bailable warrant. Now, in this case, there is no clear cut information as to whether such procedure has been adopted by the learned Magistrate before issuing non-bailable warrant.

8. Indiscriminately cheques are being issued by the parties for the sake of interest, but there cannot be such issuance of non-bailable warrants by the Courts. Because it is an order for arrest. Though under Section 41 Cr.P.C. Court cannot order/direct arrest, it can direct execution of non- bailable warrant. In other words, arrest a person under non-bailable warrant. Therefore, the court must be very careful in issuing a non-bailable warrant. There is no surprise in the complainant having interest in the execution of warrant issued in a cheque bouncing case. Neither the complainant nor the accused are above the law. The warrant issued in a cheque bouncing case should not become a blank cheque in the hands of the police.

9. In the circumstances, the learned Judicial Magistrate, Vadipatti will recall the non-bailable warrant from the Inspector of Police, Vadipatti Police Station, Vadipatti, and in turn enforce the attendance/appearance of the accused before the Court strictly following the procedures laid down under the Code of Criminal Procedure.

10. With the above observations, this Criminal Original Petition is disposed of.