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CRL.O.P.No.6330 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2022

CORAM:

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

CRL.O.P.No.6330 of 2022

State rep by

The Deputy Superintendent of Police,  
Metro Wing-I, Crime Branch CID,  
Egmore, Chennai – 600 008.

... Petitioner

Vs

1. A.Sivakumar
2. Pandiyarajan
3. M.Saravanan

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to set-aside the order passed by the Metropolitan Magistrate, Special Trial Court for CCB & CBCID, Egmore Chennai – 08 in unnumbered CrI.M.P., dt.01.02.2022 and to issue a direction to the Learned Metropolitan Magistrate, Special Trial Court for CCB & CBCID, Egmore, Chennai-08 to issue a Non-Bailable Warrants against the absconding accused A5-Sivakumar, A6-Pandiyarajan and A10-Saravanan.

For Petitioner : Mr.A.Gokulakrishnan  
Additional Public Prosecutor

For Respondents : -



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## **ORDER**

The Criminal Original Petition has been filed to set aside the order passed by the learned Metropolitan Magistrate, Special Trial Court for CCB & CBCID, Egmore, Chennai dismissing the petition to issue Non-Bailable Warrants and issue a direction to the learned Metropolitan Magistrate, Special Trial Court for CCB & CBCID, Egmore, Chennai to issue a Non-Bailable Warrant arrest against the absconding accused A5/Sivakumar, A6/Pandiyarajan and A10/Saravanan.

2. Learned Additional Public Prosecutor appearing for the petitioner would submit that the petitioner is the Deputy Superintendent of Police, Metro Wing – I, Crime Branch CID, Egmore, Chennai. Based on the complaint given by one R.Rajesh a case in Crime No.4 of 2021 was registered by the CBCID, Metro for the offences under Sections 147, 323, 347, 384 & 420 of IPC which was, later, altered to Sections 147, 323, 347, 384 & 420 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. The case has been registered against one Tharun Krishna Prasad and 9 others. It is a case where the accused along



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with the certain police officials including the respondents kidnapped the de facto complainant and under threat, the main accused with the help of certain Police officials had committed grave offence of extortion and illegally transferred the property belonging to the defacto complainant. The petitioner has so far arrested 5 accused in this case. The Police officials, against whom there are serious offences are still evading arrest despite earnest steps taken by the petitioner to bring the accused for investigation. Despite issuance of notice under Section 41(a) Cr.P.C, the respondents have not complied with the same, whereas the respondents have instigated their family members to file a complaint against the Officer before the Human Rights Commission. The respondents, who belong to uniform service, was supposed to obey the Law are evading investigation and thereby, the petitioner had filed an Application before the learned Special Judge seeking to issue Non-Bailable Warrant of arrest under Section 73 of Cr.P.C. He would further submit that Section 73 of Cr.P.C. confers the power upon the Magistrate to issue warrant and it can be exercised by him during the stage of investigation also, whereas the learned Magistrate, without properly understanding the provisions, by a cryptic order, returned the Application even without numbering the same.



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He would further submit that if an accused evades arrest the only course left to the Investigating Officer to ensure his presence would be to seek the learned Magistrate to invoke his power under Section 73 of Cr.P.C. and only thereafter, the Investigating Officer can proceed further relating to proclamation and attachment. He would also submit that the Magistrate is empowered to legitimately exercise his powers under Section 73 of Cr.P.C. for the apprehension of the accused during investigation and in this case, the respondents are facing charges for offences of cognizable in nature which are Non-Bailable. In support of his contention, the learned Additional Public Prosecutor would rely upon a Three Judges bench judgment of the Hon'ble Apex Court in ***State through CBI Vs. Dawood Ibrahim Kaskar and others reported in 2000(10) SCC 43.***

3. Heard the learned Additional Public Prosecutor and perused the materials available on records.

4. In this case the respondents who are Police officials are charged for serious offences of cognizable nature and which are Non-Bailable. It is the case of the petitioner that the respondents are evading arrest and despite the efforts taken by the petitioner to bring them for investigation



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by serving summons under Section 41 (a) of Cr.P.C., they are evading arrest. The petitioner had filed an Application seeking issuance of Non-Bailable warrant for arrest against them, whereas the learned Magistrate by a cryptic Order dated 01.02.2022, had rejected the same, with an observation ***"The said specific provision is for issuing warrant to the pending cases, not for issuing warrant to investigation"***.

5. In ***State through CBI Vs. Dawood Ibrahim Kaskar and Others***, referred supra the Hon'ble Apex Court has held as follows:-

“ 21. *That Section 73 confers a power upon a Magistrate to issue a warrant and that it can be exercised by him during investigation also, can be best understood with reference to Section 155 of the Code. As already noticed under this section a police officer can investigate into a non-cognizable case with the order of a Magistrate and may exercise the same powers in respect of the investigation which he may exercise in a cognizable case, except that he cannot arrest without warrant. If with the order of a Magistrate the police starts investigation into a non-cognizable and non-bailable offence, [like Sections 466 or 467 (Part I) of the Indian Penal Code] and if during investigation the Investigating Officer intends to arrest the person accused of the offence he has to seek for and obtain a warrant of arrest from the Magistrate. If the accused evades the arrest, the only course left open to the*



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*Investigating Officer to ensure his presence would be to ask the Magistrate to proclamation and attachment. In such an eventuality, the Magistrate can legitimately exercise his powers under Section 73, for the person to be apprehended is “accused of a non-bailable offence and is evading arrest”.*

*22. Another factor which clearly indicates that Section 73 of the Code gives a power to the Magistrate to issue warrant of arrest and that too during investigation is evident from the provisions of Part C of Chapter VI of the Code, which we have earlier adverted to. Needless to say the provisions of proclamation and attachment as envisaged therein is to compel the appearance of a person who is evading arrest. Now, the power of issuing a proclamation under Section 82 (quoted earlier) can be exercised by a Court only in respect of a person “against whom a warrant has been issued by it”. In other words, unless the Court issues a warrant the provisions of Section 82, and the other sections that follow in that part, cannot be invoked in a situation where in spite of its best efforts the police cannot arrest a person under Section 41. Resultantly, if it has to take the coercive measures for the apprehension of such a person it has to approach the Court to issue warrant of arrest under Section 73; and if need be to invoke the provisions of Part C of Chapter VI.[Section 8(3) in case the person is accused of an offence under TADA.]”*

6. In the above decision, the Hon'ble Apex Court has held that Section 73 of Cr.P.C. confers the power upon the Magistrate to issue the



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warrant and that it can be exercised by him during the investigation also.

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As stated above, the accused in the case are evading arrest and the only course left open to the Investigating Officer to ensure their presence, would be to seek the Magistrate to invoke his power under Section 73 of Cr.P.C. and only thereafter can proceed with the other procedures of proclamation and attachment. In such an eventuality, there is no bar for the Magistrate to legitimately exercise his power under Section 73 of Cr.P.C for the person to be apprehended during investigation since the respondents are accused of Non-Bailable offence and are evading arrest.

7. In view of the above, the impugned order stands set aside. The learned Magistrate is directed to issue Non-Bailable Warrant of arrest as against the absconding accused A5-Sivakumar, A6-Pandiyarajan and A10-Saravanan. Accordingly, this Criminal Original Petition stands ordered.

**18.03.2022**

Index : Yes/No  
Internet : Yes/No  
Speaking order/Non-speaking order  
mpl/nti



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**A.D.JAGADISH CHANDIRA,J.**

Mpl/nti

To

1. The Learned Metropolitan Magistrate,  
Special Trial Court for CCB & CBCID,  
Egmore, Chennai-08.
2. The Public Prosecutor,  
High Court of Madras.

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