

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Crl.Revision Case No.273 of 2015

and

M.P.No.1 of 2015

M.Chithraipandian ... Petitioner/Complainant

vs

S.K.Hussain Respondent/Accused

Revision Case filed under Sections 397 read with Sec. 401 of Cr.P.C. to call for the records on the order dated 05.03.2015 in Crl.M.P.No.1576 of 2015 in C.C.No.6397 of 2006 on the file of the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai-1 and to set aside the same dismissing the Crl.M.P.No.1576 of 2015 in C.C.No.6397 of 2006.

For Petitioner : No appearance

For Respondent : No Appearance

ORDER

The Criminal Revision Case is filed challenging the order dated 05.03.2015 in Crl.M.P.No.1576 of 2015 in C.C.No.6397 of 2006 on the file of the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai-1 and to set aside the same.

2. A plain reading of the notes paper would go to show that there was no representation on behalf of the petitioner from 02.06.2015 onwards. On the last occasion, when the matter was listed on 15.07.2015, since there was no representation on behalf of the petitioner, the revision was directed to be posted today under the caption, 'for dismissal'. Even today, when the matter is called, there is no representation on behalf of the petitioner. Further, it appears that the petitioner has not served any notice on the

respondent. Under such circumstances, this Court is left with no other option except to dispose of the revision on merits as per the judgment of the Hon'ble Apex Court reported in (2013) 3 SCC 721 [K.S.Panduranga vs. State of Karnataka], in which it is held that if the petitioner does not appear, there is no necessity for the Court, which is hearing the matter, to issue warrant for special notice or appoint any Amicus Curiae to argue the matter on behalf of the petitioner.

3. The crux of the case is as follows:

The accused borrowed a sum of Rs.40,00,000/- from the complainant for developing his business and in lieu of the same, executed promissory notes dated 04.09.2000 in favour of the complainant. The accused has also given the title deeds of his property situated at No.139, Perumbakkam, Plot No.14, Saidapet Taluk, Chengalput District as security to the complainant. In order to discharge the said debt, the cheque given by the accused dated 18.11.2005 was returned dishonoured with an endorsement 'Funds insufficient', while presented for encashment. Thereafter, after following the legal procedures contemplated under Section 138 of the Negotiable Instruments Act, the complainant has filed a private complaint before the learned VII Metropolitan Magistrate, George Town, Chennai and the same was taken cognizance in C.C.No.6397 of 2006 by the said Magistrate. Thereafter, for the non-appearance of the accused, Non-bailable warrant was issued. After a lapse of nearly 9 years, the accused filed a petition under Section 70(2) to recall the warrant pending against him. The same was allowed by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai-1. Hence, the present revision.

4. The only ground which has been raised in the grounds of revision is that the warrant has been recalled after a lapse of 9 years, that too, without serving any notice on the complainant/petitioner herein in a private complaint case. Hence, the same has to be set aside.

5. There is no representation for the respondent as no notice has been served on him.

6. At the outset, it is not in dispute that a Non-bailable Warrant has been pending against the respondent-accused for the past 9 years. While so, on 5.3.2015, the respondent accused has filed a petition under Section 70(2) of Cr.P.C. to recall the Non-Bailable Warrant pending against him with an undertaking that he will appear promptly and regularly before the court in future and the same was allowed by the learned Magistrate concerned after recording the said undertaking with other usual conditions. In this, I do not find any infirmity warranting interference at the hands of this Court.

7. In the result, the Criminal Revision Case fails and the same is accordingly dismissed. Consequently, connected Miscellaneous Petition is also closed. It is made clear that the respondent-accused will abide by the undertaking given by him to the effect that he will appear regularly in future hearings before the trial court.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

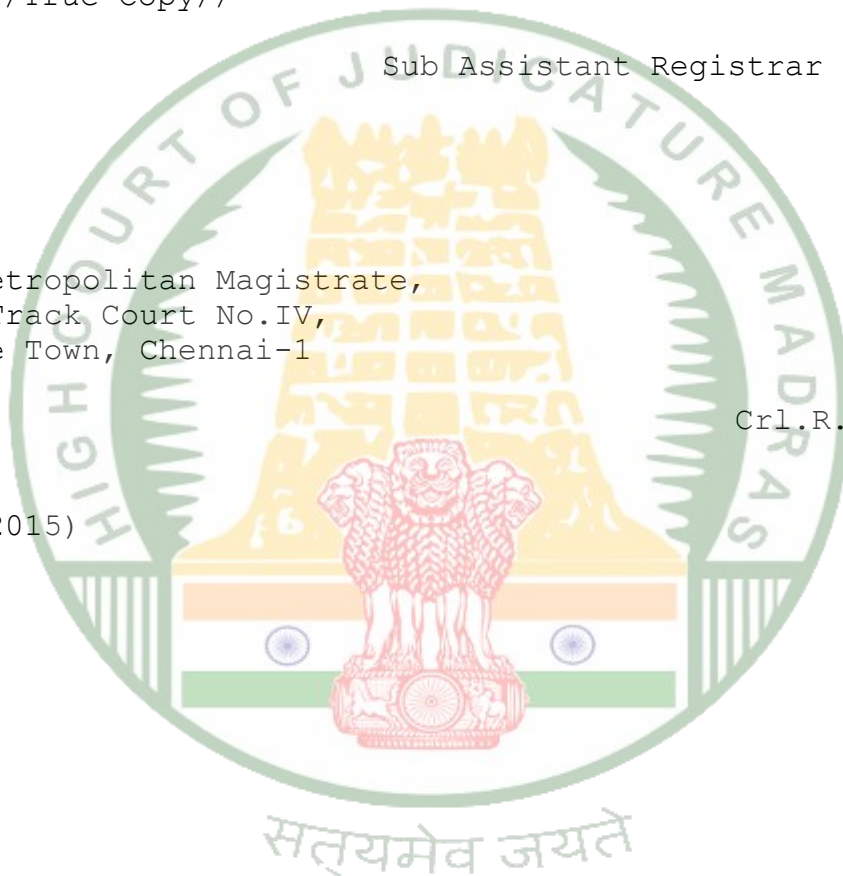
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To

1. The Metropolitan Magistrate,
Fast Track Court No.IV,
George Town, Chennai-1

Crl.R.C.No.273 of 2015

BR(CO)
CA(14/08/2015)



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