

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2015

CORAM

The Hon'ble Mr. Justice R.S.Ramanathan

Crl.O.P.No.8249 of 2015

1. Lotus Lounge Holidays Private Ltd.,
Represented by its Chief Executive Officer
M.Mahadevan
Commerce Centre
303/1, 1st Floor, Anna Salai
Teynampet, Chennai - 600 018
- 2.Mr.Mahadevan
Chief Executive Officer
Lotus Lounge Holidays Private Ltd.,
Commerce Centre
303/1, 1st Floor, Anna Salai
Teynampet, Chennai - 600 018
3. Mrs.Sreelekha Mahadevan
Director, M/s.Lotus Lounge Holidays Private Ltd.,
Commerce Centre, 303/1, 1st Floor, Anna Salai
Teynampet, Chennai - 600 018Petitioners

vs.

Air Travel Enterprises India Ltd.,
Rep. By its Manager Janakiraman
No.20, 1st Street, Haddows Road (off)
Wallace Garden, Nungambakkam
Chennai - 600 006

...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for the records in C.C.No.148 of 2013 and set aside the order dated 03.02.2014 on the file of Fast Track Court, Alandur.

For Petitioner : Mr.P.C.Harikumar

O R D E R

This petition has been filed to set aside the order dated 03.02.2014 made in C.C.No.148 of 2013 by the learned Judicial Magistrate, Fast Track Court, Alandur.

2. It is submitted by the learned counsel for the petitioner that on 03.02.2014, the petitioners 2 and 3 were not present and their counsel filed an application under Section 317 Cr.P.C to condone their absence. But the learned Judicial Magistrate refused to receive the petition and passed over the case and when the case was taken up subsequently, the counsel appearing for the petitioners presented the petition filed under Section 317 Cr.P.C and this time also the same was not received by the Magistrate. The Magistrate also issued bailable warrant against petitioners 2 and 3 and adjourned the case to 06.02.2014. Therefore, the petitioner filed Transfer C.M.P.No.432 of 2014 before the learned Sessions Judge, Chengalpet and during the pendency of the said Transfer C.M.P, the learned Magistrate who issued the bailable warrant on 03.02.2014 got transferred and on that ground, Transfer C.M.P.no.432 of 2014 was dismissed and liberty was given to the petitioners to approach the Judicial Magistrate for recalling the warrant. Learned counsel for the petitioner submitted that this petition is filed to recall the order dated 03.02.2014 as the order is illegal and the Magistrate ought not to have passed the order of bailable warrant against the petitioners 2 and 3 when the petitioners 2 and 3 were represented by counsel and petition under Section 317 Cr.P.C was also filed on behalf of them.

3. It is seen from the counter filed by the respondent/complainant in Transfer C.M.P.No.432 of 2014 that on 03.02.2014, no one represented the accused and therefore, the Magistrate was pleased to issue bailable warrant and adjourned the case to 06.02.2014 and thereafter, the petitioners through their counsel, filed a petition under Section 317 Cr.P.C and that was refused to be received by the Magistrate as the orders were already passed. Therefore, there is dispute regarding the factual aspect whether the application under Section 317 Cr.P.C was filed before the warrant was issued or after the warrant was issued and it is also the admitted case of the petitioners that they filed application under Section 317 Cr.P.C when the case was taken up and the Magistrate refused to receive the application and when the matter was taken up for the second time, the petitioner's counsel filed application under Section 317 Cr.P.C and that was also refused to be taken on file and bailable warrant was issued. In the said circumstances, no useful purpose will be served by summoning records as admittedly 317 petition was not filed and it was refused to be taken on file according to the learned counsel for the petitioner. However, considering the fact that the bailable warrant was issued as per the direction of the learned Sessions Judge in Transfer C.M.P.No.432 of 2014, the petitioners ought to have approached the learned Judicial Magistrate, Alandur for recalling the warrant and the petitioners are permitted to file the application without surrendering themselves before the Court and the learned Judicial Magistrate shall consider recalling of the bailable warrant in accordance with law.

4. The Criminal Original Petition is disposed of with the above direction.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

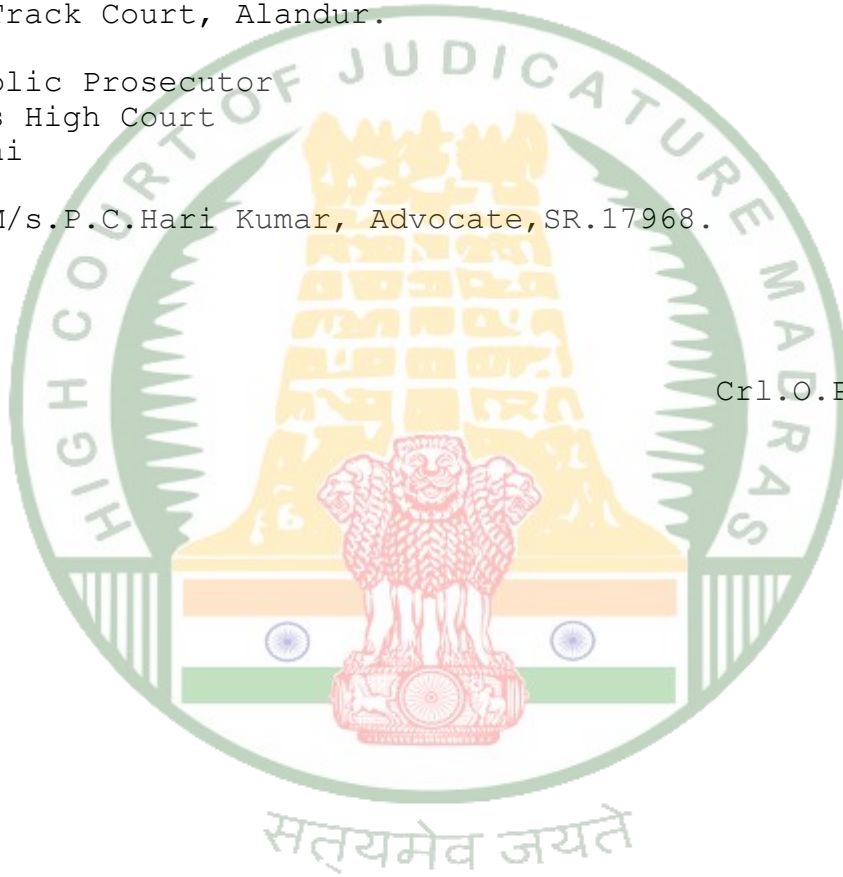
1. The Judicial Magistrate
Fast Track Court, Alandur.

2. The Public Prosecutor
Madras High Court
Chennai

+1 cc to M/s.P.C.Hari Kumar, Advocate, SR.17968.

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