

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.08.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.OP.Nos.14122 and 14123 of 2016

S.Mukanchand Bothra
Rep by his son and POA
M.Gagan Bothra

.... Petitioner/Complainant in
both Crl O.Ps

Vs

P.Mani

... Respondent/Accused in both
Crl.O.Ps

Crl.OP.No.14122 of 2016 : Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order dated 22.06.2015 passed in Crl.M.P.No.719 of 2015 in C.C.No.6788 of 2002 by the Hon'ble VIII Metropolitan Magistrate, George Town, Chennai and to direct the Hon'ble VIII Metropolitan Magistrate, George Town, Chennai to issue warrant of arrest in C.C.No.6788 of 2002 immediately to secure the custody of the accused within a period of time.

Crl.OP.No.14123 of 2016 : Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order dated 22.06.2015 passed in Crl.M.P.No.718 of 2015 in C.C.No.6787 of 2002 by the Hon'ble VIII Metropolitan Magistrate, George Town, Chennai and to direct the Hon'ble VIII Metropolitan Magistrate, George Town, Chennai to issue warrant of arrest in C.C.No.6787 of 2002 immediately to secure the custody of the accused within a period of time.

For Petitioner : Mr.M.Gagan Bothra,
in both Crl.O.Ps Party-in-person

For Respondent : Mr.Paul Noble Devakumar
in both Crl.O.Ps

C O M M O N O R D E R

These petitions have been filed to set aside the orders dated 22.06.2015 passed by the learned VIII Metropolitan Magistrate, George Town, Chennai in Crl.M.P.No.719 of 2015 in

C.C.No.6788 of 2002 and Crl.M.P.No.718 of 2015 in C.C.No.6787 of 2002 respectively and to direct the learned VIII Metropolitan Magistrate, George Town, Chennai to issue warrant of arrest in C.C.Nos.6788 and 6787 of 2002 immediately to secure the custody of the accused within a period of time.

2. Heard the petitioner; learned counsel for the respondent and perused the materials placed on record.

3. For the sake of convenience, the parties will be referred to by their name. Mukanchand Bothra filed two complaints in CC.Nos.6787 and 6788 of 2002 against P.Mani under Section 138 of Negotiable Instruments Act before the learned VIII Metropolitan Magistrate, George Town. The learned Magistrate acquitted Mani in both the cases on 07.10.2011. Aggrieved by the acquittal, Mukanchand Bothra filed Crl.A.Nos.801 and 802 of 2011 before this Court. A learned Single Judge of this Court heard Mukanchand Bothra and Mani and by a detailed judgment, reversed the judgment of acquittal passed by the trial Court and convicted and sentenced Mani as follows:

"2. Considering the representation made by the respondent/accused, instead of imposing sentence to the accused to undergo imprisonment, this Court is inclined to impose a fine of Rs.6,05,000/- in Crl.A.No.801 of 2011 and Rs.55,000/- in Crl.A.No.802 of 2011 and the same has to be paid within a period of two months from today, in default in payment, the respondent/accused shall undergo three months simple imprisonment. Out of the fine amount of Rs.6,05,000/- in Crl.A.No.801 of 2011 and Rs.55,000/- in Crl.A.No.802 of 2011, a sum of Rs.6,00,000/- and Rs.50,000/- respectively are ordered to be paid as compensation to the appellant/complainant."

4. This Court had granted Mani two months time to pay the fine or undergo default imprisonment. Till date, Mani has not complied with the judgment passed by this Court, by some reason or other. While so, Mani has filed M.P.No.1 of 2015 in Crl.A.No.801 of 2011 and M.P.No.1 of 2015 in Crl.A.No.802 of 2011 for extension of time to pay the fine, on the ground that he has preferred an appeal to the Supreme Court. Mukanchand Bothra has filed Crl.O.P.Nos.14122 and 14123 of 2016 for a direction to the learned VIII Metropolitan Magistrate, George Town to issue committal warrant for securing Mani, so that he undergoes imprisonment that has been imposed upon him by this Court.

5. Mr. Paul Noble Devakumar, learned counsel for Mani submits that if the fine amount is paid and consequentially, the same will be disbursed as compensation to Mukanchand Bothra and thereafter, if the Supreme Court allows his appeal, he will not be in a position to recover the money from Mukanchand Bothra.

6. In the considered opinion of this Court, that cannot be a good reason for Mani to avoid compliance with the judgment passed by this Court validly. Unless the Supreme Court stays the judgment, it is the duty of the State authorities to implement the directions of this Court, even without any motion by Mukanchand Bothra. Assuming for a moment, that Mukanchand Bothra does not file any petition, it does not mean that the trial Court can ignore the judgment of conviction and sentence passed by this Court. However, this Court is of the view that some opportunity should be given to Mani to pay the fine, with a further direction that the trial Court shall not disburse the fine amount as compensation to Mukanchand Bothra, pending orders of the Supreme Court.

7. In the result, the following orders are passed :

[a] Two weeks time is given to Mani from the date of receipt of a copy of this order to deposit the fine amounts as ordered by this Court in CrI.A.Nos.801 and 802 of 2011 before the learned VIII Metropolitan Magistrate, George Town.

[b] The learned VIII Metropolitan Magistrate, George Town is directed not to disburse the compensation amount to Mukanchand Bothra until further orders from the Supreme Court.

[c] Mani is directed to file an affidavit before the learned VIII Metropolitan Magistrate, George Town giving his correct house address and other particulars.

[d] Three months time is granted to Mani to obtain necessary orders from the Supreme Court of India, failing which, the learned VIII Metropolitan Magistrate, George Town will be entitled to disburse the compensation amount to Mukanchand Bothra.

[e] If the fine amount is not deposited within two weeks as directed by this Court, the learned VIII Metropolitan Magistrate, George Town shall issue a committal warrant to the Police to arrest Mani and for making him to undergo default sentence imposed by this Court.

With the above direction, these petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

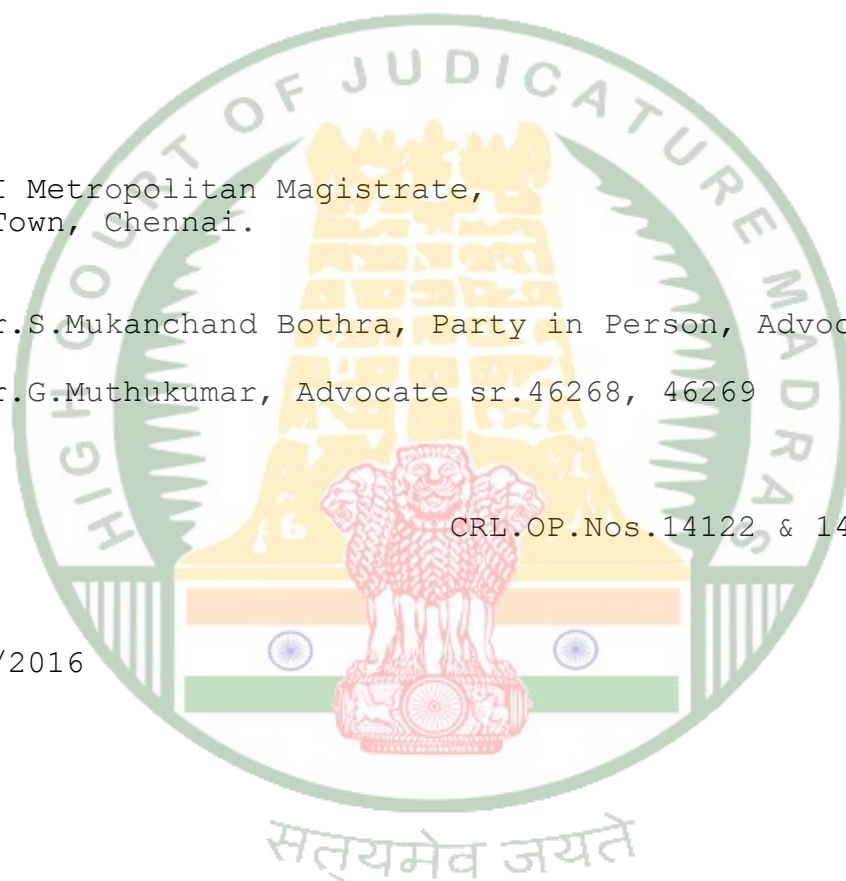
1.The VIII Metropolitan Magistrate,
George Town, Chennai.

+2cc to Mr.S.Mukanchand Bothra, Party in Person, Advocate
sr.45645

+2cc to Mr.G.Muthukumar, Advocate sr.46268, 46269

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srg 31/08/2016



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