

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.03.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.R.C.No.1609 of 2017

and

Crl.M.P.Nos.16535 & 16536 of 2017

Karishmaa Foundation Pvt. Ltd.,
rep. by Rakesh P.Sheth

.. Petitioner

Vs.

M/s.Suryadev Alloys and Powers Ltd.,
Rep. by its Marketing Manager Mr.Ganesan,
No.7, 3rd Floor, "Golden Enclave",
No.184, P.H.Road, Kilpauk,
Chennai-600 010.

.. Respondent

Prayer: Criminal Revision Case filed under Section 397 and 401 of Cr.P.C., to set aside the order passed by the Fast Track Court-IV, Metropolitan Magistrate, George Town, dated 13.11.2017 in C.C.No.4433 of 2013.

For Petitioner : Mr.Nithyaesh Natraj for
Mr.Nithyaesh and Vaibhav

For Respondent : No Appearance

O R D E R

This Criminal Revision is preferred by the petitioner/accused against the order passed by the learned Metropolitan Magistrate Court, George Town, Chennai made in C.C.No.4433 of 2013 dated 13.11.2017 wherein the learned trial Court issued non bailable warrant.

2.Brief case of the petitioner is that:

The respondent filed the complaint against the petitioner/accused for alleged offences under sections 138 and 142 of the Negotiable Instrument Act, 1881. The same was taken on file in C.C.No.4433 of 2013. Further the respondent also preferred another petition bearing C.C.No.2443 of 2013 it is also pending and both the trial were conducted jointly. In the cross examination of PW1, the learned Magistrate admitted an electronic document to be marked without following the procedure

under section 65B of the Indian Evidence Act declining the objection raised by the petitioner /accused. Aggrieved over the same, the petitioner /accused filed the criminal original petition before this Court in Crl.O.P.No.20479 of 2017 and this Court was pleased to pass an order of interim stay of all further proceedings on 22.09.2017. A specific request was made by the petitioner/accused before the learned Magistrate to defer the trial till the final pronouncement of orders by this Court in Crl.O.P.No.20479 of 2017. In the meantime, the learned Magistrate issued non bailable warrant against the petitioner/accused on 13.11.2017. Therefore, this revision is filed for setting aside the order dated 13.11.2017 passed by the learned Magistrate in C.C.No.4433 of 2013.

3.The learned counsel for the petitioner submits that the lower Court failed to see that the respondent herein has preferred the above mentioned complaint against the petitioner as Managing Director of M/s.Karishmaa Foundations Pvt. Ltd. for alleged offences under sections 138 and 142 of the Negotiable Instrument Act, 1881 along with under sections 190 and 200 of Cr.P.C. and that the offence are all bailable in nature and compoundable.

4.The learned counsel for the petitioner submits that the present offence which the petitioner is being accused of in the complaint is a compoundable and bailable offence and hence issuance of NBW itself without first having recourse to a bailable warrant is improper. Assuming but not conceding that the powers do exist, even then, at least recourse could have been had to issuance of a bailable warrant before immediately issuing a coercive measure of NBW.

5.The learned counsel for the petitioner submits that the complaint itself is a frivolous one and ought not to have been entertained for various defects which matters the petitioner is willing produce. Therefore, issuance of the NBW on such a petition is most capricious, arbitrary and a high handed act because of which the fundamental rights of the petitioner has been affected. It is further submitted that irreparable loss and hardship would be caused to the petitioner apart from loss of reputation if this illegal act is allowed to continue.

7.I heard M/s.Nithyaesh and Vaibhav, learned counsel for the petitioner and perused the entire materials available on record. No representation on behalf of the respondent.

8.It is admitted by both parties in this criminal revision that the main C.C.No.4433 of 2013 was stayed by this Court in Crl.O.P.No.20479 of 2017 dated 22.09.2017. Therefore, the petitioner/accused filed memo before the trial Court to defer the proceedings in C.C.No.4433 of 2013 till the final order passed in Crl.O.P.No.20479 of 2017. Instead of appreciating the submission of the petitioner/accused, the learned Judicial

Magistrate issued Non Bailable Warrant for his non appearance on 13.11.2017.

9.At the outset, the Non-Bailable Warrant issued by the learned Judicial Magistrate cannot be sustained in the eye of law.

10.Considering the facts and circumstances of this case, this Court is inclined to pass the following order:

(a) The impugned order passed by the learned Metropolitan Magistrate (Fast Track Court No.IV) George Town, Chennai in C.C.No.4433 of 2013 dated 13.11.2017, is hereby set aside;

(b) The petitioner/accused is directed to appear one week daily at 10.30 a.m. and thereafter on every hearing before the trial Court, without fail.

11.With the above direction, this Criminal Revision is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vs

To

1.The Metropolitan Magistrate,
Fast Track Court-IV,
George Town,
Chennai.

2.-do- Thro' The Chief Metropolitan Magistrate,
Egmore, Chennai.

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and

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VD(CO)

RRS (08/05/2019)

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