

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C. No.999 of 2018

Binu Joseph Kaappilly

.. Petitioner

Vs

Kumar Rajendran

.. Respondent

Criminal Revision Petition filed under Section 397 and 401 Cr.P.C. to set side the order dated 07.08.2018 passed in M.P.No.2395 of 2018 in C.C.No.1776 of 2018 on the file of the learned Metropolitan Magistrate, FTC III, Saidapet, Chennai and consequently direct the learned Magistrate to re-call the non-bailable warrant ordered on 17.07.2018.

For Petitioner : Mr.Swarnam J. Rajagopalan

ORDER

This revision has been filed seeking to set aside the order dated 07.08.2018 passed in M.P.No.2395 of 2018 in C.C.No.1776 of 2018 on the file of the learned Metropolitan Magistrate, FTC III, Saidapet, Chennai and consequently direct the learned Magistrate to re-call the non-bailable warrant ordered on 17.07.2018.

2. The petitioner is the accused and the respondent is the complainant. The respondent filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act and a case is pending in C.C.No.1776 of 2018 before the learned Metropolitan Magistrate, FTC III, Saidapet, Chennai.

3. It is the case of the petitioner that the case in C.C.No.1776 of 2018 was posted for first appearance on 21.06.2018 and also on 26.06.2018. As the petitioner was unwell, she could not appear on those hearing dates and subsequently, the case was posted on 17.07.2018, for her appearance. On the said date viz., 17.07.2018, the petitioner has not appeared, for which, the Court below has issued a Non-Bailable Warrant against the petitioner. Thereafter, the petitioner filed a petition under Section 70(2) of Cr.P.C., seeking to recall the warrant

issued against her by explaining the reasons for her non-appearance before the Court below on 17.07.2018. However, the Court below dismissed the petition filed under Section 70(2) Cr.P.C. on 07.08.2018. As against the said dismissal order passed by the Court below, the petitioner is before this Court.

4. I have perused the order dated 07.08.2018 passed by the Court below, wherein it is stated that the absence of the petitioner was on account of medical grounds and that the summons was served on the petitioner to appear before the Court below on 03.05.2018. Further, it is stated that from 03.05.2018, 16.05.2018, 25.05.2018, 07.06.2018, 21.06.2018, 26.06.2018 and 17.07.2018, the petitioner neither appeared to receive the copy nor for further proceedings and disbelieving the medical certificate produced by the petitioner showing that she was admitted in the hospital only for 4 days, the Court below dismissed the petition.

5. The learned counsel for the petitioner submits that the absence of the petitioner was only due to her illness it is neither willful or nor wanton and he prays this Court to set aside by imposing certain conditions on the petitioner.

6. Considering the limited request made by the petitioner in respect of non-appearance, no notice is required for the respondent/complainant and his presence is dispensed with. Accordingly, this petition is allowed and the order passed by the Court below dated 07.08.2018, is hereby set aside. The petitioner is directed to appear before the Court below in the next hearing and receive the copy and for further proceedings. The trial Court shall ensure that the accused is cross-examined on the day, she is examined in-chief by following the law laid down by the Supreme Court in Vinodh Kumar Vs State of Punjab (2015[1] MLJ [Crl] 288). If the accused adopts any dilatory tactics, in the light of the law laid down by the Supreme Court in State of U.P. Vs Shambunath Singh JT (2001 [4] SC 319), the order of this Court is automatically vacated without notice to the petitioner.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

To

1. The Metropolitan Magistrate, FTC III, Saidapet, Chennai.

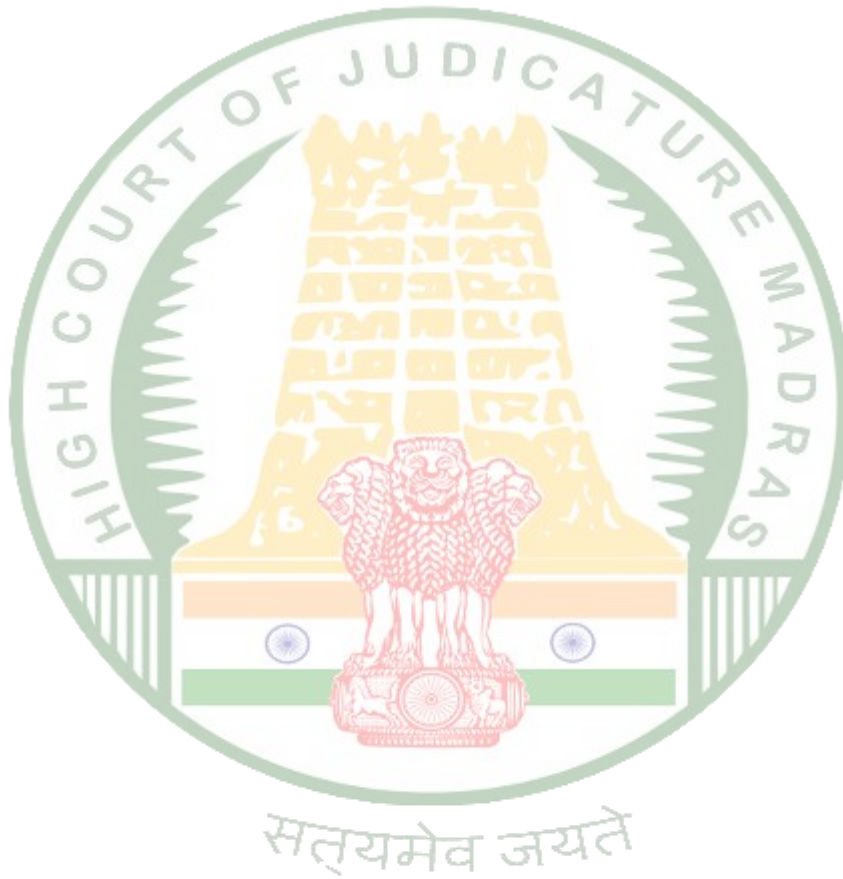
2. The Chief Metropolitan Magistrate, Egmore, Chennai
(for information)

3. The Public Prosecutor, High Court of Madras.

+1cc to Mr.Swarnam J Rajagopalan, Advocate SR.No.61003

Cr1.R.C. No.999 of 2018

GMV (03/10/2018)



WEB COPY