

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

CrI.R.C.No.277 of 2018

R.Premalatha

... Petitioner/A3

vs

M/s.A & G Facades P Ltd.,
No.274, Burma Colony, 4th Main Road,
Perungudi, Chennai - 600 036. Respondent

Prayer : Criminal Revision Petition filed under Sections 397 and 401 of Code of Criminal Procedure, against the order passed in dispensing the personal appearance in CMP.No.2611 of 2017 in C.C.No.256 of 2017 pending before the learned Judicial Magistrate Fast Track at Magistrate Level, Alandur on 25.01.2018.

For Petitioner : Mr.S.Kumaresan
for M/s.R.R.N. Legal

For Respondent : Mr.S.Sujatha
Legal Aid counsel

ORDER

This instant criminal Revision is directed against the order of the Learned Judicial Magistrate, Fast Track at Magistrate Level, Alandur in CMP.No.2611 of 2017 dated 25.01.2018 in as much as directing the petitioner to be present at the time of first questioning under Section 251 of Cr.P.C. with regard to C.C.No.256 of 2017.

2.It is the case of the Revision Petitioner that she is arrayed as the 3rd respondent / 3rd accused in the above Complaint filed by the respondent under 200 CrPC alleging of an Offence under section 138 of Negotiable Instruments Act.

3.The above complaint in C.C.No.256 of 2017 came to be filed as against the 1st respondent / 1st accused company namely, Raahul Foundations Private Ltd. Mr.Ravi Krishna Kumar, the

revision petitioner's husband was then the Director and the authorized signatory for all day to day affairs and operations of Company vide Company's resolution dated 29.05.2008. However the petitioner herein who was a dormant director was arrayed as an accused in the above complaint as third accused, next to the Company and her husband respectively.

4. In actual the petitioner is a House Wife and she has ailing parents to take care and children to be looked after. Again she is unaware of the transactions projected in the subject complaint. In the said factual background she filed an application under Section 205 of Cr.P.C. seeking to dispense with her personal appearance in further hearings unless her attendance is required by the Trial Judge. She also undertook to that effect.

5. The Learned Trial Judge on appraisal of available records was pleased to allow the petition, however with a direction to the petitioner to be present at the time of questioning to be made under section 313 of Cr.P.C. and on the day of judgment and on any other day during the trial if the Trial Court finds it necessary and insists.

6. The said Order is under challenge by way of this Criminal Revision in as much as the direction to the revision petitioner to be present at the time of first questioning under Section 313 of Cr.P.C.

7. Per Contra, the Learned Legal aid counsel appearing for the respondent submitted that the impugned order do not warrant any interference and she further submitted that the present application is devoid of merits and intended to protract the Case before the Trial Court.

8. At this juncture, the attention of this Court was drawn to an earlier decision of this Hon'ble Court made in the matter of Stalin Augustine Joseph @ A.J.Stalin Vs. Sri Saravana Spinning Mills (P) Ltd rep. by R.Ganesh in CrI.R.C. No.451 of 2016 which runs as follows:

"3. On the hearing date, on his behalf, a learned counsel filed a petition in CMP.No.64 of 2015 under section 205 of Cr.P.C. On 18.01.2016, the learned Judicial Magistrate No.I, Tirupur passed the following order:

"Heard both sides. Due to his ill-health, this

petition is allowed with some conditions that the Advocate shall appear for receiving copies, questioning and 313 of Cr.P.C. proceedings.

Finally, this petition is allowed with the above conditions and the counsel for Advocate shall appear every hearing without fail. Further, the Advocate shall appear for furnishing copies on 8.2.2016."

4. Learned counsel for the revision petitioner would contend that the petitioner is ailing and is hailing from Nagpur and his present condition is such that he cannot make a long trip to the trial court. Under such circumstances, his counsel has filed the petition under Section 205 of Cr.P.C.

5. Learned counsel for the revision petitioner also submits that on behalf of the revision petitioner/accused, his counsel is ready to receive the copies of documents under section 208 of Cr.P.C. Further, he will participate in the first questioning under section 251 of Cr.P.C. Therefore, the conditions imposed in the impugned order are not in accordance with law.

6. I have anxiously considered the submissions of the learned counsel for the revision petitioner and perused the impugned order and the materials on record.

7. It is relevant to note section 205 of Cr.P.C, which runs as follows:

"205. Magistrate may dispense with personal attendance of accused:

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner herein before provided."

8. Section 205 of Cr.P.C deals with the power of the Magistrate to grant leave of absence to the accused and to give leave to represent him by a learned counsel. This is dealt with under section 205(1) of Cr.P.C. But, at the same time, once such a permission is granted, the accused cannot take it as a leave and licence to paralyze the court proceedings. Discretion

has been conferred upon the learned Magistrate under section 205(2) of Cr.P.C to compel the presence of the accused.

9. Criminal courts are infested with crowd. In the Magistrate Courts dealing with cases under Section 138 of the Negotiable Instruments Act, more particularly, in commercial towns, like Tirupur, the gathering of crowd will be more. It is a quite sickening sight. The teeming crowd in the Magistrate Courts affects the work/concentration of the Magistrates. Much of the time of the Magistrates has been eaten away by giving them dates. Actually, no specific work is turned out. In other words, it is not an 'effective hearing date'. The accused should not be put to unnecessary hardship, but at the same time, long rope should not be given to the accused to spoil any progress to be made in the case.

10. Now reverting to the facts and circumstances of the present case, I am of the opinion that the conditions imposed in the impugned order seems to be extra conditions and they are unnecessary at the infancy of the case.

11. In view of the foregoing, the impugned order dated 18.01.2016 made in CMP.No.64 of 2015 in CC.No.882 of 2015 by the learned Judicial Magistrate No.1, Tirupur is modified as under:

(i) The counsel, who filed the petition and Vakalath under section 205 of Cr.P.C, will receive the copies of documents under section 208 of Cr.P.C from the trial court and he will participate in Section 251 of Cr.P.C. questioning; and

(ii) thereafter, for any effective hearing, if the attendance of the revision petitioner/accused is absolutely necessary, the learned Magistrate can enforce his attendance."

9. On perusal of records and appraisal of the facts and circumstances involved in the instant case, this Court finds that the above decision would also squarely applicable to revision petitioner's case.

10. Accordingly the counsel, who filed the petition and Vakalath under section 205 of Cr.P.C., will receive the copies of documents under section 208 of Cr.P.C from the trial court and he will participate in section 251 of Cr.P.C questioning and thereafter, for any effective hearing, if the attendance of the revision petitioner/accused is absolutely necessary, the learned

Magistrate can enforce his attendance.

11.In the result, the Criminal Revision stands allowed with the above conditions stated supra. No costs.

12.The Legal Aid authorities attached to this Court is directed to pay a sum of Rs.5,000/- as fees to the Legal Aid Advocate Smt.S.Sujatha.

vs

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate Fast Track at Magistrate Level, Alandur, Chennai.

2.The Chief Judicial Magistrate, Chengalpet (for information)

3.The Secretary
Legal Service Authority,
High Court, Madras.

+2cc to M/s.S.Sujatha, Advocate SR.NO.69239

sm:9.10.2018

Cr1.R.C.No.277 of 2018

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