

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.OP.No.23571 of 2016
and
CRL.OP.No.24398 of 2018

Mrs.Kamala Dhiran
Proprietor of M/s. Steel Agencies
Rep. by Power Agent Manoharlal Dhiran
No.33, Jones Street
Mannady, Chennai 600 001.Petitioner in
both Crl.O.Ps/Complainant
Vs.

Mr.D.Valan Kumar
Proprietor D.V.S.Stores
No. 8/191, Kaval Kinaru Main Road,
Tirunelveli District, Pin 627 105
Presently at No.73, st. Antony Street
St.Xavier Colony,
Near Punie Antony Church
Post off Melapalayam, Tirunelveli 627 005
.....Respondent in both Crl.O.Ps /Accused

PRAYER in Crl.Op.No.24398 of 2018: Criminal Original
Petition filed under Section 482 of Criminal Procedure
Code, praying to direct the learned VII Metropolitan
Magistrate, George Town, Chennai to initiate action for
filing First Information Report against the respondent
herein for the offence under Section 229-A IPC as has
been directed by this Hon'ble Court in Crl.Op.No.23571 of
2016 dated 08.11.2016.

PRAYER in Crl.Op.No.23571 of 2016: Criminal Original
Petition filed under Section 482 of Criminal Procedure
Code, praying to issue direct the learned Fast Track
Court No.IV Magistrate George Town, Chennai to dispose of
the case in C.C.No.2683 of 2010 within a time frame.

For Petitioner
in both Crl.O.Ps : Mr.V.Sairam

COMMON ORDER

CRL.OP.No.24398 of 2018 has been filed for a direction to the 7th Metropolitan Magistrate, George Town, Chennai to initiate action as per the directions issued by this Court in Crl.O.P.No.23571 of 2016, by order dated 08.11.2016.

2. The petitioner had filed a petition in Crl.O.P.No.23571 of 2016 before this Court, seeking for a direction to the Court below to dispose of the case in C.C.No.2683 of 2010. This Court called for a report from the learned Magistrate and issued appropriate directions. The said order is extracted hereunder:

2. Pursuant to the direction issued by this Court, the Metropolitan Magistrate, FTC - IV, George Town, Chennai has sent a report dated 07.11.2016, the relevant portion of which is as under:

"3. On 06.09.2016, the case was advanced and since the accused surrendered and filed a recall petition, NBW was recalled and the Next Date of Hearing was advanced from the 30.11.2016 to 27.09.2016 and the complainant was intimated about the said hearing date. On 27.09.2016, a joint memo was filed by the counsels for both the parties that they are trying to sort out the issue for amicable settlement and sought for an adjournment to 24.10.2016 and the adjournment was granted. And on the 24.10.2016 also again adjournment was sought for the settlement and hence the said C.C.No/2683 of 2010 was posted on 14.11.2016 for settlement.

4. I humbly submit your HONOUR that on the next date of hearing (i.e.,) 14.11.2016, if the parties had not settled as per their counsels request, the case will be proceeded for the Cross of P.W.1, which is the earlier stage and the main case itself would be completed at the earliest on the day to day basis. I humbly request your Honour to accept the above in compliance of the report

called for in Ref.No.1 and I am also annexing the copy of the joint memo filed in my Court by both the counsels on 27.09.2016"

3. This Court is satisfied with the explanation given by the Metropolitan Magistrate, FTC -IV, George Town, Chennai and the Magistrate is directed to proceed with the case, in the event of the settlement talks failing. The Metropolitan Magistrate shall also obtain a bond from the accused u/s. 88 Cr.P.C., without sureties, so that if the accused absconds, a fresh FIR can be registered u/s. 229 A IPC.

3. In respect of the above order, the respondent was not cooperating with the disposal of the case inspite of executing a bond under Section 88 of Cr.P.C.

4. It is also brought to the notice of this Court that the respondent has been absconding for a long time and the Court below has not given a complaint and registered an F.I.R under Section 229 A IPC, as directed by this Court.

5. It is seen from the records that the C.C. is of the year 2010 and the same has been filed by the petitioner for an offence under Section 138 of the Negotiable Instruments Act. The case has been pending for the last 8 years. The respondent has managed to drag on the proceedings for the last 8 years, In spite of executing a bond under Section 88 of Cr.P.C., the respondent has managed to stay away from the proceedings and thereby, the entire proceedings have come to a stand still. The Court below ought to have proceeded further and taken steps to get an F.I.R registered against the respondent under Section 229 A IPC as directed by this Court. However, the Court below has not taken any steps towards the same.

6. The Courts cannot stand helpless in situation like this. Sufficient safeguards are provided under both the Indian Penal Code as well as the Criminal Procedure Code to ensure the presence of an accused in a case. The Court cannot act mechanically in the matter of this nature and the Court has to use its power in order to ensure that the respondent appears before the Court and cooperate in the disposal of the case. The Court, apart

from registering an F.I.R under Section 229 A IPC, can also proceed to attach the property of the respondent, after issuing a proclamation against the respondent, in order to ensure the presence of the respondent before the Court.

7. The Court below unfortunately has failed to exercise its power.

8. In the facts and circumstances of the case, there shall be a a direction to the learned VII Metropolitan Magistrate, to initiate appropriate action as directed by this Court in this order as well as the previous order passed by this Court in Crl.O.P.No.23571 of 2016. The Court below shall ensure that the proceedings in C.C.No.2683 of 2010 is completed strictly within a period of three months from the date of receipt of a copy of this order. The Court below is directed to file a compliance report before this Court after the completion of the proceedings.

9. With the above direction, these Criminal Original Petitions are disposed of.

Sd/-

Assistant Registrar (CS ix)

//True Copy//

Sub Assistant Registrar

raja/dh

To

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

2.The IV magistrate George Town,
Chennai.

+1cc to Mr. V.Sairam, Advocate SR.No. 77860

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and
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ASK(11/12/2018)