

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.28630 of 2018

M/s.Rafik Leaders,
Rep. by its Proprietor,
U.Mohammed Raix Ali,
S/o.A.R.Usmanali,
No.2, Hajiya Street,
B.P.Agraharam,
Erode, Erode District. .. Petitioner

vs.

- 1.The Superintendent of Police,
Erode District,
Erode-638 001.
- 2.The Deputy Superintendent of Police,
Erode Town, Erode.
- 3.The Inspector of Police,
Erode North Police Station,
Erode, Erode District.
- 4.S.Mansoor Ahamed,
Son of Allah Bather,
Proprietor,
M/s.Elahi Leathers,
No.2, Hajipet, 2nd Street,
Melvisharam,
Walajah Taluk,
Vellore District. .. Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, praying to direct the 1 and 2 respondents to monitor the investigation in Crime Number:56 of 2018 pending on the file of the 3rd respondent.

For Petitioner : M/s.M.Guruprasad

For R1 to R3 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

O R D E R

This petition has been filed seeking for a direction to take action against the accused person in Crime No.56 of 2018, which has been registered under Section 229 (A) of IPC.

2.It is seen from the records that the petitioner has filed a criminal complaint against the 4th respondent, for an offence under Section 138 of the Negotiable Instruments Act and the same is pending before the Judicial Magistrate Court No.1, Erode, in S.T.C.No.231 of 2012. The Court below had issued a bailable warrant against the 4th respondent by order, dated 16.07.2012. Thereafter, the 4th respondent surrendered before the Court and he has also executed a bond. On his executing a bond, the bailable warrant was recalled. Subsequently, the case was at the state of 313 questioning. Again the 4th respondent did not appear before the Court below and therefore, a non-bailable warrant was issued against him.

3.The 4th respondent, thereafter filed a petition before this Court in CrI.O.P.No.23780 of 2016, seeking to quash the non-bailable warrant. This Court, by order, dated 25.10.2016, dismissed the said petition and directed the 4th respondent to surrender before the Court below within a period of two weeks and directed to him furnish a bond for a sum of Rs.50,000/- with two sureties for a like sum. This Court further directed that if the petitioner absconds again, a fresh FIR can be registered against him under Section 229 (A) of IPC.

4.The learned counsel for the petitioner would submit that the 4th respondent did not comply with the order passed by this Court and did not appear before the Court and therefore, an FIR has been registered in Crime No.56 of 2018, for an offence under Section 229 (A) of IPC. Since there was absolutely no progress even after registration of the FIR, the petitioner approached this Court seeking for appropriate direction.

5.It is seen from the records that the 4th respondent had on an earlier occasion, executed a bond, when a bailable warrant was issued against him. Thereafter, a Non-Bailable Warrant was issued against the 4th respondent and the same was challenged by the 4th respondent before this Court and this Court directed the 4th respondent to surrender and execute a fresh bond for a sum of Rs.50,000/- with two sureties, which was not complied with by the 4th respondent. The Court below has already taken action against the 4th respondent under Section 229(A) of IPC.

6.A plain reading of Section 229 (A) of IPC, would show that a person, who has been released on bail or on a bond, fails

without any sufficient cause, to appear in terms of bail or a bond, shall be punished with an imprisonment, which may extend to one year or with fine or with both. When an FIR is registered under this provision, there is no scope for the police to conduct any investigation. The Court has to directly proceed against the person and if the accused person is not able to give any sufficient cause for his non-appearance, the Court has to proceed further and impose punishment as prescribed under Section 229 (A) of IPC. Just because, the F.I.R has been registered before the police, it does not mean that investigation has to be conducted in this regard. Useful reference can be made to the Judgment of the Hon'ble Supreme Court in (2018) 1 Madras Weekly Criminal 345 and also the Judgment of this Court in 2018 (3) CTC 156. Detailed guidelines have been given by this Court in the Judgment referred supra in this regard.

6.The Criminal Original Petition is disposed of with a direction to the Judicial Magistrate No.1 Erode, to immediately take action against the 4th respondent under Section 229(A) of IPC and proceed further in accordance with law.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

stm
To

1.The Superintendent of Police,
Erode District,
Erode-638 001.

2.The Deputy Superintendent of Police,
Erode Town, Erode.

3.The Inspector of Police,
Erode North Police Station,
Erode, Erode District.

4.The Judicial Magistrate No.1,
Erode.

5.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.M.Guruprasad, Advocate sr 84532.

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VSNI1 (CO)
SP(02/01/2019)



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