

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Cr1.R.C.No.196 of 2019

Shankar's Farm
Proprietor N.Ravishankar,
No.14, Jaffar Street,
Chennai - 600 001.

...Petitioner/Complainant

-Vs-

S.S.Sheik Ajmul

...Respondent/Accused

This Criminal Revision Case is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order passed in C.C.No.2257 of 2008 dated 27.03.2014 on the file of the Metropolitan Magistrate, FTC IV, George Town, Chennai, confirmed in C.A.No.83 of 2018 dated 11.12.2018 on the file of the Principal Sessions Judge, Chennai.

For Petitioner : Mr.A.R.Nixon

For Respondent : Notice Served - No Appearance

ORDER

The petitioner is complainant and respondent is accused. The petitioner had filed a complaint under Section 200 of Cr.P.C. against the respondent for the offence punishable under Section 138 of Negotiable Instruments Act (in short "NI Act"), before the learned VII Metropolitan Magistrate, George Town, Chennai. The petitioner/complainant has examined himself as P.W.1 and marked Ex.P1 to Ex.P6 to prove his case and the matter was posted for cross examination by the accused. Since the respondent/accused had been absent continuously, Non Bailable Warrant had been issued against the respondent/accused. Meanwhile, the case was transferred to IV Metropolitan Magistrate (FTC), George Town, Chennai, and subsequently it was dismissed on 27.03.2014 for non appearance of the petitioner/complainant. Aggrieved against the same, the petitioner/complainant had filed an appeal in C.A.No.83 of 2018 before the learned Principal Sessions Judge, Chennai, and the learned Sessions Judge, by judgment dated 11.12.2018 dismissed the appeal, against which, the complainant is before this Court

with the present criminal revision case.

2 The learned counsel for the petitioner/complainant would submit that the petitioner has filed a complaint against the respondent and the case was taken on file by the learned VII Metropolitan Magistrate, George Town, Chennai, in C.C.No.2257 of 2008, and the petitioner examined himself and the matter was posted for cross examination by the accused. Thereafter, since the accused had not been appeared before the Court below, NBW was issued against him and in the meanwhile the case was transferred to IV Metropolitan Magistrate (FTC). The petitioner has contested the case through his power of attorney and the power of attorney has resigned his job. The petitioner did not know the fact that the case was transferred. The IV Metropolitan Magistrate (FTC), without sending any notice to the petitioner, on 27.03.2014, dismissed the case on the ground of non appearance of the petitioner/complainant. The learned Magistrate has simply affixed the notice in the Notice Board and proceeded the case further, which resulted in dismissing the complaint. The lower appellate Court also has failed to consider the above fact and dismissed the appeal filed by the petitioner/complaint, which warrants serious interference of this Court.

3 Heard the learned counsel appearing for the petitioner and perused the materials available on record.

4 It is seen that the petitioner filed a private complaint against the respondent and the case was taken on file and the petitioner examined himself as P.W.1 and the matter was posted for cross examination by the accused. Thereafter, since the accused had not been appeared before the Court below, NBW was issued against him and in the meanwhile the case was transferred to IV Metropolitan Magistrate (FTC), George Town, Chennai. The IV Metropolitan Magistrate (FTC), without sending any final notice to the parties, on 27.03.2014, dismissed the case on the ground of non appearance of the petitioner/complainant. The learned Magistrate has simply affixed the notice in the Notice Board and proceeded further. When the case is transferred for administrative reasons, the transferee Court should send final notice to the parties, if the parties have not appeared before the Court, even after receipt of the notice, the Court can pass orders. In this case, the IV Metropolitan Magistrate (FTC), George Town, did not send any notice to the parties and simply affixed the notice in the Notice Board and dismissed the case for non appearance of the complainant. This Court is of the view that the IV Metropolitan Magistrate (FTC), should have sent notice to the parties, before dismissing the case, which warrants interference.

5 In view of the above reasons, the judgment dated 11.12.2018 made in C.A.No.83 of 2018 by the learned Principal

Sessions Judge, Chennai, confirming the order dated 27.03.2014 made in C.C.No.2257 of 2008 by the learned IV Metropolitan Magistrate (FTC), George Town, Chennai, is hereby set aside and the IV Metropolitan Magistrate (FTC) is directed to take the case in C.C.No.2257 of 2008 on file and proceed the matter in accordance with law. The petitioner/complainant is directed to appear before the IV Metropolitan Magistrate (FTC) , on 10.04.2019 and take steps to execute the NBW issued against the respondent/accused.

6 With the above observations and directions, this criminal revision case is allowed.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Sessions Judge, Chennai.
2. The IV Metropolitan Magistrate, Fast Track Court, George Town, Chennai.

Copy to

The Section officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.A.R.Nixon, Advocate sr 26325.

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NMI (CO)
SP (02/04/2019)

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