

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRIMINAL APPEAL NO.47 OF 2015

M/s CCS Infotech Limited,
Represented by its Executive Director,
Mr.H.Ratnakumar,
S/o Harindranath,
Having Registered Office at
No.14, Periyar Road,
T.Nagar, Chennai 600 017. ... Appellant/Complainant

/versus/

1. M/s Modern Complete IT Store Pvt.Ltd.,
Represented by its Director Mr.K.Gopinath,
Having Office at Shop No.6, 2nd Floor, Nakoda Plaza,
No.17, Narasingapuram Street, Mount Road,
Chennai 600 002.
 2. Mr.K.Gopinath
Director,
M/s Modern Complete IT Store Pvt.Ltd.,
Having Office at Shop No.6, 2nd Floor, Nakoda Plaza,
No.17, Narasingapuram Street, Mount Road,
Chennai 600 002.
 3. 2.Mr.K.Ajay Raghunath,
Director,
M/s Modern Complete IT Store Pvt.Ltd.,
Having Office at Shop No.6, 2nd Floor, Nakoda Plaza,
No.17, Narasingapuram Street, Mount Road,
Chennai 600 002.
- .. Respondents/Accused 1 to 3

Criminal Appeal filed under Section 378 of the Criminal Procedure Code praying to set aside the order dated 27.02.2014 made in C.C.No.80 of 2013 on the file of the learned Fast Track Court-II(At Magisterial Level), Egmore, Chennai.

For Appellant :Mr.K.R.Ramesh Kumar

For Respondents:No appearance
(notice unserved & returned)

J U D G M E N T

The specific case of the appellant in Crl.A.No.47 of 2015 is that the respondents herein have purchased computer peripherals to the tune of Rs.5,37,70,608/- and issued two cheques for Rs.50,00,000/- (each cheque for Rs.25,00,000/-). When the cheques were presented for collection, they were bounced and therefore, criminal complaint was filed for dishonouring the cheques. Meanwhile, the accused, who have committed fraud and cheating had absconded and therefore, notice could not be served on them, inspite of Non Bailable Warrant issued to secure them.

2. When the case was listed before the Fast Track Court No.II, (Magisterial Level), Egmore on 27.02.2014, recording the absence of the complainant and pendency of Non-Bailable Warrant against the accused for a long time, the learned Magistrate has dismissed the complaint under Section 204(4) of Cr.P.C as steps not taken.

3. The learned counsel appearing for the appellant would submit that the complainant was unable to execute the warrant, since the respondents 2 and 3 have absconded and they were not able to secure even by the police, despite a Look Out Notice issued through the Interpol by the Government of Abudabi for offence allegedly committed by the respondents.

4. Pointing out the difficulty faced by the complainant/appellant to serve notice on the respondents and inability of the police to execute the Non-Bailable Warrant issued against the respondents, the learned counsel appearing for the appellant would submit that it was not the fault of the complainant. Due to the abscondence of the respondents and their refusal to submit themselves to the due course of law, the Warrant could not be executed. If opportunity is given, he will take all necessary steps to serve notice on the respondents either personally or through substitute service and proceed with the case.

5. There is no representation for the respondents. As pointed out by the learned counsel appearing for the appellant, the respondents are absconding themselves and evading the notice. The Court notices sent to the last known address of the respondents were returned with an endorsement "addressee has vacated".

6. In the light of the above fact, the perusal of the complaint and conduct of the respondents prima facie indicates that a calculated fraud has been committed by the respondents and after issuing cheques to the complainant they are absconding and evading the receipt of the Court notice.

7. In such circumstances, if the complaint is dismissed for non-prosecution, it will help the fugitive to escape from the clutches of law and go scott free, which will lead to great miscarriage of justice. For the said reasons, the impugned order of the learned Magistrate in C.C.No.80 of 2013, dated 27.02.2014 is liable to be set aside. Accordingly, the order of the Judicial Magistrate passed in C.C.No.80 of 2013, dated 27.02.2014 is set aside and the case is remanded back to the trial Court.

8. Accordingly, this Criminal Appeal is disposed of. The Registry is directed to send the records to the trial Court forthwith. On receipt of the records, the trial Court shall cause notice to the defacto complainant as well as the respondents, take up the matter and dispose of the case, as expeditiously as possible. If the respondents still evades notice, necessary permission shall be granted to the complainant to serve notice by substitute service and proceed in the manner known to law.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Metropolitan Magistrate,
The Fast Track Court No.II, (Magisterial Level),
Egmore, Chennai.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.K.R.Ramesh Kumar, Advocate, S.R.No.41897

Crl.A.No.47 of 2015

VGI (CO)
CS/24/07/2019