

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.R.C.No.573 of 2019
and CrI.M.P.No.7800 of 2019

S.Govindarajan ... Petitioner/Complainant

Vs.

Vijayakumar P. Jain Respondent/Accused No.3

Criminal Revision filed under Section 397 r/w 401 Cr.P.C., to set aside the order dated 21.03.2019 passed in C.M.P.No.5879 of 2018 in C.C.No.3 of 2017 on the file of the Judicial Magistrate V, Coimbatore.

For Petitioner : Mr.A.E.Ravichandran

ORDER

This criminal revision has been preferred seeking to set aside the order dated 21.03.2019 passed in C.M.P.No.5879 of 2018 in C.C.No.3 of 2017 on the file of the Judicial Magistrate V, Coimbatore.

2. The petitioner filed a private complaint in C.C.No.3 of 2017 before the Judicial Magistrate-V, Coimbatore, against eight accused. It is the case of the petitioner that in the year 1999, he obtained a loan for a sum of Rs.1,00,000/- from Premchand K. Jain (A1); Premchand K. Jain (A1) represented to the petitioner that he is required to execute a mortgage deed for the said loan in respect of his property; therefore, the petitioner went to the Registrar's office and signed certain documents. It is the further case of the petitioner that he discharged the said loan amount in the year 2000 itself, but, Premchand K. Jain (A1) had filed a suit for specific performance of contract based on a sale agreement, which, according to the petitioner, he did not execute at all. On these allegations, the private complaint was filed and cognizance was taken by the learned Magistrate and process was issued to the eight accused named in the private complaint.

3. Out of the eight accused, six accused are now appearing before the Trial Court, but summons has not been served on Mohankumar (A7) and Kesavan (A8). Admittedly, warrant has also been issued to secure Mohankumar (A7) and Kesavan (A8). Under such circumstances, the co-accused Vijayakumar (A3) filed an application before the Trial Court for splitting up of the case against the two accused who are in abscondence, so that, the trial against the six accused who are appearing before the Trial Court can be proceeded with. Acceding to the said request, the Trial Court, by the impugned order dated 21.03.2019 in C.M.P.No.5879 of 2018 in C.C.No.3 of 2017, has split up the case with regard to Mohankumar (A7) and Kesavan (A8), challenging which, the complainant/petitioner is before this Court.

4. Heard Mr.A.E.Ravichandran, learned counsel for the complainant/petitioner.

5. The learned counsel for the petitioner submitted that the Trial Court should have followed the procedures adumbrated under Rule 20 of the Civil Rules of Practice.

6. In the opinion of this Court, Rule 20, ibid will not apply to the case at hand, because, it relates to the cases where an accused who had appeared before the Court absconds in the middle. In this case, Mohankumar (A7) and Kesavan (A8) have never appeared before the Trial Court. Hence, Rule 17 will apply. The learned counsel for the petitioner submitted that before splitting up of the case, the accused should have been declared as absconders and only thereafter, the case can be split up. I am unable to persuade myself to agree with the above submission of the learned counsel for the petitioner, because, Rule 17 does not state that for splitting up of the case, proclamation should have been issued against the absconding accused. The Trial Court should bear in mind the right to speedy trial in respect of the accused who are appearing before the Court and the trial need not wait indefinitely for the police to secure the absconding accused. In this case, from 2017 to 2019, Premchand K. Jain (A1), Madhanmohan P. Jain (A2), Vijayakumar P. Jain (A3), E.A.Sardhar Khan (A4), K.Sivaprakasam (A5) and Shanmugavel (A6) have been appearing before the Trial Court and therefore, due to the non-appearance of Mohankumar (A7) and Kesavan (A8), the other accused cannot be penalized. Section 299 Cr.P.C. provides for the steps that should be taken by the Trial Court, while dealing with the case of absconding accused.

In the result, the criminal revision petition is dismissed as being devoid of merits. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

nsd

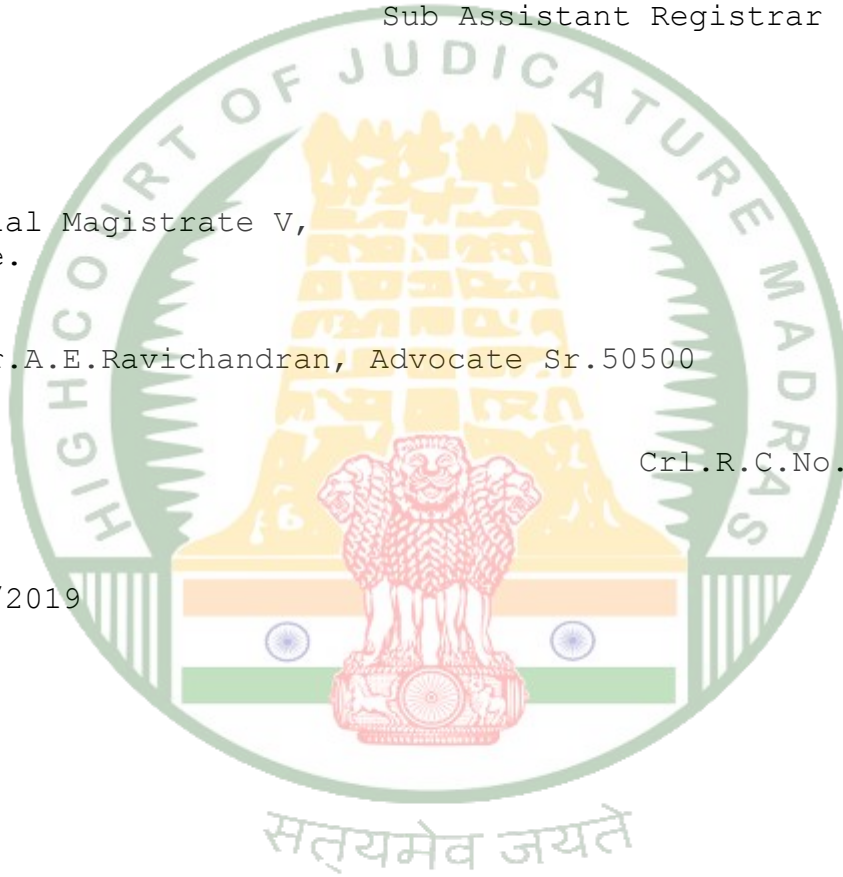
To

The Judicial Magistrate V,
Coimbatore.

+1cc to Mr.A.E.Ravichandran, Advocate Sr.50500

Crl.R.C.No.573 of 2019

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srg 15/07/2019



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