

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 24.10.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.908 of 2019

Kalvikkarasi

.. Petitioner

Vs

1. State rep by
The Inspector of Police,
Harur Police Station,
Dharmapuri District,
(Cr.No.92/2011)

2. Ranganathan .. Respondents

Prayer:- This Petition filed under section 397 and 401 Cr.P.C., to call for entire records in C.C.No.82 of 2011 on the file of the Court of Judicial Magistrate, Harur, Dharmapuri and set aside the order dated 11.11.2014.

For Petitioner : Mr.N.S.Sivakumar

For Respondent : Mr.M.Mohamed Riyaz
Addl. Public Prosecutor for R1

Mr.M.Selvam for R2

ORDER

The Criminal Revision has been filed by the petitioner to call for the entire records in C.C.No.82 of 2011 on the file of the Judicial Magistrate Court, Harur, Dharmapuri and set aside the order dated 11.11.2014.

2. The brief facts of the case is that on a complaint given by the petitioner a case in crime No.92 of 2011 was registered by the respondent against the rider of the Hero Honda Splendor Bike bearing Registration No.TN-29-AY-4997. After completion of investigation the respondent police had filed the charge sheet against the second respondent in C.C.No.82 of 2011 before the learned Judicial Magistrate, Harur, Dharmapuri district for offence under Section 279 and 304 (A). After completion of investigation the respondent had laid the final report against

the second respondent for offence under Section 207 304 (A). The learned Judicial Magistrate, Harur took cognizance of the offence and the case was numbered as C.C.No. 82 of 2011 and summon was issued to the second respondent. On 11.11.2014 the learned Judicial Magistrate finding that the first respondent had not taken any steps to serve the summon from the year 2011 had passed the order stopping the proceedings under Section 258 of Cr.P.C. The petitioner/defacto complainant being an aggrieved party has filed the present revision challenging the order passed by the learned Magistrate, Harur, Dharmapuri district stopping the proceedings under Section 258 of Cr.P.C.

3. The learned counsel for the petitioner submitted that the second respondent is a Village Administrative Officer and this Court finding that the first respondent has not taken steps to produce the accused before the trial Court by earlier order dated 29.08.2019 had directed the Inspector of Police, Harur Police Station to produce the second respondent before this Court. Pursuant to the order the first respondent Inspector of Police had produced the second respondent before this Court on 18.10.2019. Thereafter this Court had directed the first respondent to be present along with the case diary in Crime No.92 of 2011 and meanwhile the second respondent had entered appearance through his counsel. Further he submitted that the second respondent/accused is a Village Administrative Officer and the respondent Inspector of Police has wilfully evaded serving summon on him and the trial Judge without following the procedure contemplated under Chapter VI had by a cryptic and non speaking order stopped the proceedings under Section 258 of Cr.P.C. and thereby the trial Court has committed irregularity in the proceedings which has resulted in great prejudice to the victim. The second respondent/accused being a Government servant, the summons have to be served in the manner provided by Section 62 of Cr.P.C. which was not being followed by the trial Court in this case. Due to the stoppage of the case the petitioner is unable to recover the compensation amount from the second respondent and he would thereby seek to set aside the order and pray for a direction to the learned Magistrate to take up the case and proceed in accordance with law.

4. The learned Additional Public Prosecutor would submit that since the second respondent was not available in the address given by him during the relevant period, the first respondent was unable to serve the summon on him and thereby the learned Judge had stopped the proceedings invoking Section 258 of Cr.P.C. He would also submit that the petitioner was in service still 2013 and the trial Court had not recorded the reasons for stopping proceedings.

5. Mr.Selvam, learned counsel for the second respondent would submit that the second respondent was not aware about the pendency of the case against him and thereby he has not appeared before the trial Court, however he submitted that the second respondent is prepared to get along with the trial of the case in C.C.No.82 of 2011.

6. Heard the counsels and perused the materials available on record.

7. It is seen that the trial Court had passed the order under Section 258 of Cr.P.C by stopping further proceedings. Section 258 of Cr.P.C. is extracted as hereunder:-

“ 258 Power to stop proceedings in certain cases

In any summons case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate may for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge”.

8. In this case it is seen that the learned Magistrate has without following the procedure contemplated under Chapter VI of Cr.P.C had by a cryptic and non-speaking order without recording the reasons has stopped the further proceedings under Section 258 of Cr.P.C even prior to the appearance of the accused. The learned Magistrate has not rendered any finding with regard to the steps taken for effecting service of summons on the accused as per Chapter VI of Cr.P.C and the reasons for non service of summons on the accused. The underlying principle in empowering the Magistrate to stop the proceedings, without pronouncing judgment of acquittal or releasing the accused is to prevent miscarriage of justice. The power vested with the Magistrate is to be sparingly exercised only in appropriate cases, where proceeding with the case would amount to abuse of process of law or undue harassment to the accused. Therefore it is clear that it would be open to the Magistrate to resort to Section 258 of Cr.P.C. and stop further proceedings when a situation arises that he does not find it possible to dispose of the matter by adopting normal procedure contemplated by the code and he may stop proceedings after recording the reasons for doing so. As stated earlier in this case no detailed reasoning has been given by the Magistrate for doing so.

9. In this case now that the second respondent/accused had been served with the summons by this Court and produced before this Court by the first respondent and that he is now aware of the case in C.C.No.82 of 2011 against him before the Judicial Magistrate Court, Harur, this Court is of opinion that in the interest of justice the order stopping further proceedings can be set aside and the case in C.C.No.82 of 2011 be revived/restored to its original file and the second respondent be directed to face trial.

10. In view of the same the order passed by the learned Judicial Magistrate, Harur, Dharmapuri district dated 11.11.2014 in C.C.No.82 of 2011 is set aside and thereby C.C.No.82 of 2011 on the file of the Judicial Magistrate Court, Harur is revived/restored. The learned Judicial Magistrate is directed to take C.C.No.82 of 2011 on file and complete the trial in accordance with law within a period of six months from the date of receipt of a copy of this order. The second respondent is directed to appear before the trial Court on 08.11.2019 without fail. With the above direction the criminal revision petition stands disposed of.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate Court, Harur, Dharmapuri.
 2. The Inspector of Police, Harur Police Station, Dharmapuri District.
 3. The Public Prosecutor, High Court, Madras.
- +1 cc to Mr.N.S.Sivakumar, Advocate, S.R.No.89128
- +1 cc to Mr.M.Selvam, Advocate, S.R.No.89596

Cr1.R.C.No.908 of 2019

SPD(CO)
SSM(04/11/2019)