



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.03.2020

Coram::

The Honourable Mr.Justice P.Rajamanickam

Criminal Revision Case No.380 of 2020
& Crl.M.P.No.2761 of 2020

Mr.Ramu Kalanjiam Venkataraman,
Director, M/s.Lakshmi Petro Pvt Ltd.,
No.122, Kalliamman Koil Street,
Virugambakkam, Chennai - 600 092.
Residing at:
No.3, Sanjay Gandhi Nagar,
Virugambakkam, Chennai - 600 092. ...Petitioner/2nd Accused

/versus/

1. M/s.Paceman Finance India Pvt. Ltd.,
Rep. by its Manager, Mr.Elumalai,
No.963, Poonamallee High Road,
Crescent Court, Suit No.21,
Purasawalkam,
Chennai - 600 084. 1st Respondent/Complainant
2. M/s.Lakshmi Petro Pvt. Ltd.,
Having its registered Office at:
No.122, Kalliamman Koil Street, Virugambakkam,
Chennai - 600 098. 2nd Respondent/1st Accused

Prayer :- This Criminal Revision Petition is filed under Section 397, 401 of Cr.P.C., to set aside the order passed in CMP.No.2156/2020 in C.C.No.1230/2018 order dated 17.02.2020 on the file of the Fast Track Court No.IV, Metropolitan Magistrate, George Town, Chennai.

For Petitioner : Mr.S.Veerarachavan

For Respondent : Mr.V.Bhiman

O R D E R

This Criminal Revision Case has been filed by the Accused No.2 to set aside the order passed by the Fast Track No.IV, Metropolitan Magistrate, George Town, Chennai, in Crl.M.P.No.2156 of 2020 in C.C.No.1230 of 2018, dated 17.02.2020.

2. The 1st respondent herein has filed a private complaint under Section 138 of Negotiable Instrument Act, against the petitioner and four others. Based on the said

complaint, the Fast Track No.IV, Metropolitan Magistrate, George Town, Chennai, has taken the case on file in C.C.No.1230 of 2018 and issued summons to the petitioner herein and four others. After receipt of the summons, the accused Nos.3 to 5 have filed CrI.O.P.No.21230 of 2018 before this Court to quash the proceedings against them. This Court by the order dated 25.09.2019 has allowed the said petition. However, directed the trial Court to dispose of the case in C.C.No.1230 of 2018 against other accused persons within a period of three months, from the date of receipt of a copy of the said order. Thereafter, the petitioner herein has not appeared before the Trial Court. On 02.01.2020, the case was posted for questioning under Section 251 of Cr.P.C., On that date, the petitioner herein has not appeared. Hence, a petition under Section 317 of Cr.P.C was filed to condone his absence and the same was allowed and the case was adjourned on 07.01.2020. On that date, the petitioner herein has filed substitution petition and hence the case was adjourned to 10.01.2020. On 10.01.2020, the said petition was returned and the case was adjourned to 20.01.2020 for questioning under Section 251 of Cr.P.C., On that date also, the petitioner herein has not appeared and hence the case was adjourned to 27.01.2020. On 27.01.2020 also the petitioner herein did not appear. However, a petition was filed under Section 317 of Cr.P.C. The Learned Trial Court has dismissed the said petition and issued NBW. Subsequently, on 17.02.2020, the petitioner herein has filed a petition under Section 70(2) of Cr.P.C., to recall the said NBW without appearing before the Trial Court. The Trial Court has dismissed the said petition by the order dated 17.02.2020.

3. Challenging the said order, the accused No.2 has filed the present Criminal Revision Case.

4. The Learned Counsel for the petitioner has submitted that the petitioner herein was already retired from the Directorship of the Accused No.1/Company and hence the petitioner is not liable to pay any amount to the respondent/complainant. He further submitted that the petitioner is a diabetic and hypertension patient and he is under the medical supervision and hence, he could not appear before the Trial Court. However, mentioning the said fact, the petitioner's counsel has filed a petition under Section 317 of Cr.P.C but the trial Court, without considering the same, has dismissed the said petition and issued NBW. He further submitted that since NBW was issued on 27.01.2020, the petitioner has filed a petition under Section 70(2) of Cr.P.C., to recall the said NBW but the trial Court has dismissed the said petition also without assigning any valid reason and

therefore, he prays to set aside the said order and permit the petitioner to appear before the Trial Court and conduct the case.

5. Per contra, the Learned Counsel appearing for the 1st respondent/complainant has submitted that this Court while disposing of the CrI.O.P.No.21230 of 2018 has specifically directed the trial Court to dispose of the case in C.C.No.1230 of 2018 against the other accused persons, within a period of three months, from the date of receipt of a copy of the said order and only in pursuance of the said direction, the trial Court has insisted the petitioner to appear and to answer to the question to be asked under Section 251 of Cr.P.C., but the petitioner has wilfully failed to appear before the trial Court. He further submitted that the trial Court, after giving sufficient opportunities, finally dismissed the petition which was filed under Section 317 of Cr.P.C on 27.01.2020 and issued NBW. He further submitted that the petitioner has not filed any petition immediately to recall the NBW and only after nearly 20 days, the petitioner herein has filed a petition under Section 70(2) of Cr.P.C before the Trial Court on 17.02.2020 to recall the NBW and even at that time also, the petitioner has not appeared before the trial Court. He further submitted that the petitioner has not produced any medical records to show that he is suffering from ailments which prevented him to appear before the Trial Court. He further submitted that only with an intention to drag on the proceedings, he has not even appeared for single hearing before the Trial Court. Taking into consideration of the aforesaid facts, the trial Court has rightly dismissed the petition which was filed by the petitioner under Section 70(2) of Cr.P.C and therefore, he prayed to dismiss this Criminal Revision Case.

6. A perusal of the order passed by this Court in CrI.O.P.No.21230 of 2018, dated 25.09.2019 shows that the accused Nos.3 to 5 have filed the above said petition to quash the proceedings against them and this Court while considering their submissions has allowed the said petition and quash the proceedings against them. However, directed the trial Court to complete the trial against other accused persons within a period of three months, from the date of receipt of a copy of the said order.

7. A perusal of the order passed by the Fast Track Court No.IV, Metropolitan Magistrate, George Town, Chennai, dated 17.02.2020 shows that the trial Court has posted the case for questioning under Section 251 of Cr.P.C., on 02.01.2020. On that date, the petitioner herein did not appear and to condone his absence, a petition under Section 317 of Cr.P.C., was filed

and the same was allowed and thereafter, the case was adjourned to 07.01.2020. On that date, the petitioner herein has filed a substitution petition and hence the case was adjourned to 10.01.2020. On 10.01.2020, the said petition was returned and thereafter, the case was adjourned to 20.01.2020 for questioning under Section 251 of Cr.P.C. On 20.01.2020 also, the petitioner did not appear and hence the case was adjourned to 27.01.2020 for questioning under Section 251 of Cr.P.C. On 27.01.2020 also the petitioner did not appear. However, a petition was filed under Section 317 of Cr.P.C to condone his absence. It appears that taking into consideration of the directions issued by this Court in CrI.O.P.No.21230 of 2018 and also the fact that the petitioner was continuously absent, the Trial Court has dismissed the said petition and issued NBW. Even thereafter, the petitioner has not appeared before the Trial Court immediately and filed petition to recall the NBW. On the contrary, he has filed the petition only on 17.02.2020, even at that time also, he has not appeared before the Trial Court. Therefore, the trial Court has dismissed the said petition.

8. Since, this Court has issued a direction to the Trial Court to dispose of the case within a period of three months, the petitioner should have co-operated for the early disposal of the case but he has not appeared from 03.01.2020 to 27.01.2020. Even though he has filed a petition to recall the warrant, he has not chosen to appear before the trial Court. Unless the petitioner appeared before the trial Court, the trial Court cannot ask question with regard to the offence and proceed further. Therefore, I do not find any infirmity in the order passed by the Trial Court. Hence, this petition is liable to be dismissed.

9. In the result, the Criminal Revision Case is dismissed. The petitioner is directed to appear before the Trial Court and file a petition under Section 70(2) of Cr.P.C., within a week, from the date of receipt of a copy of this order. If any such petition is filed and the petitioner also appeared, the Trial Court, shall dispose of the said petition (either to allow or dismiss), on the same day. Further, on that day itself, the petitioner shall be questioned under Section 251 of Cr.P.C. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (C.S.III)

/True Copy/

Sub Assistant Registrar

To

1.The Fast Track No.IV,
Metropolitan Magistrate,
George Town, Chennai.

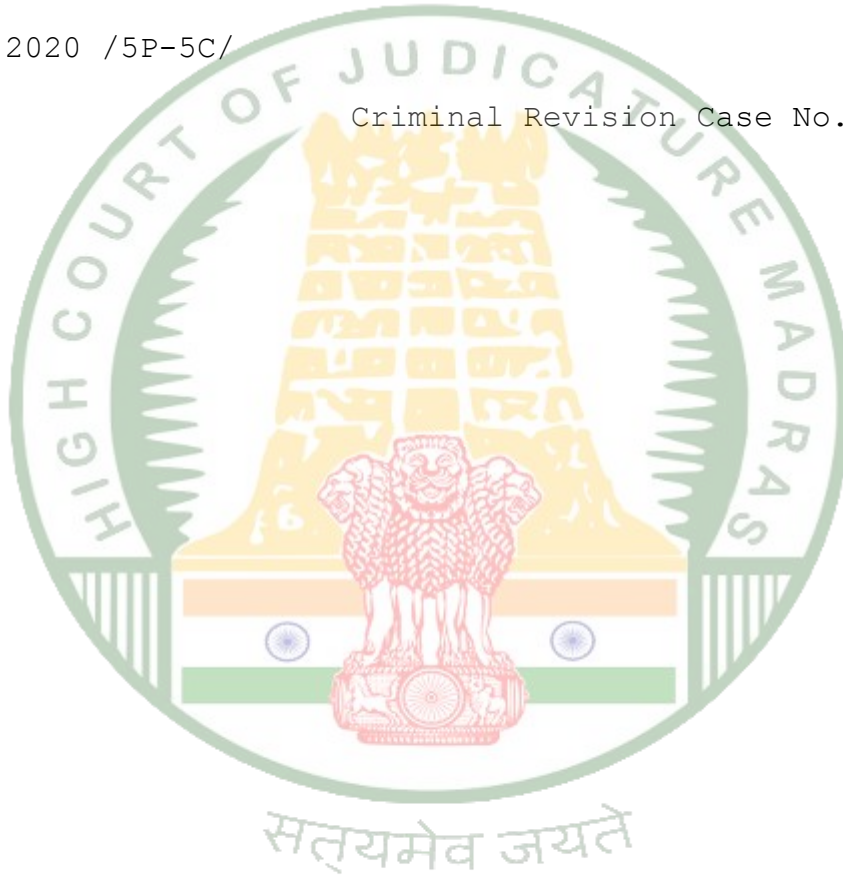
2. - Do-Thro' The Chief Metropolitan Magistrate,
Chennai.

+lcc to Mr.V.Bhiman, Advocate SR.No.22847

+lcc to Mr.S.Veeraraghavan, Advocate SR.No.23275

AKM/20.03.2020 /5P-5C/

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