

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.03.2021
CORAM
THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl. OP Nos.2471 & 2474 of 2021

M/s.Larsen and Toubro Limited,
Rep. By its Authorized Representative Mr.V.K.Natarajan,
Mount Poonamallee Road,
Manpakkam, Chennai 600 089.

... Petitioner in both the petitions

vs.

1. Hallmark Living Space Pvt Ltd.,
No.43, Old No.62/2, United Plaza, Usman Road,
T.Nagar, Chennai 600 017. TN
2. Mr. Anil Pathak
Director of Hallmark Living Space Pvt Ltd.,
Having Office at: No.43, Old No.62/2,
United Plaza, Usman Road,
T.Nagar, Chennai 600 017. TN
3. Mr. Anand Jain
Director of Hallmark Living Space Pvt Ltd.,
Having Office at: No.43, Old No.62/2,
United Plaza, Usman Road,
T.Nagar, Chennai 600 017. TN
4. Mrs. Aarthi Anand Jain
Director of Hallmark Living Space Pvt Ltd.,
Having Office at: No.43, Old No.62/2,
United Plaza, Usman Road,
T.Nagar, Chennai 600 017. TN
5. Mr. Sureshkumar Herralal
Director of Hallmark Living Space Pvt Ltd.,
Having Office at: No.43, Old No.62/2,
United Plaza, Usman Road,
T.Nagar, Chennai 600 017. TN
6. Mr. Pulliattu Chandrasekharannair Sasikumar
Director of Hallmark Living Space Pvt Ltd.,
Having Office at: No.43, Old No.62/2,
United Plaza, Usman Road,
T.Nagar, Chennai 600 017. TN

... Respondents/Accused Persons
in both the petitions

7. The State

Rep. By its Inspector of Police,
R1 Mambalam Police Station,
No.1, Madley Road, T.Nagar,
Chennai 600 017.

... Respondent in both the petitions

PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to execute the Non-Bailable Warrant pending as against the fifth respondent/Accused No.5 namely Suresh Kumar Heralal in compliance with the order dated 03.11.2020 in (i) C.C.No.6574 of 2017 (ii)C.C. No.6573 of 2017 respectively on the file of the learned Metropolitan Magistrate, FTC-1, Allikulam, Egmore, Chennai.

For Petitioner : Mr. Nithyaesh Natraj
(in both the petitions)

For Respondents : Mr.M.Mohamed Riyaz
(in both the petitions)

Additional Public Prosecutor, R7

COMMON ORDER

The issues involved in both the petitions are common and hence they are taken together, heard, and this common order is passed.

2. These petitions have been filed for a direction to the respondent Police to execute the non-bailable warrant issued against A5 and to produce him before the Court below.

3. The petitioner Company had filed a complaint against respondents 1 to 6 for an offence under Section 138 of the Negotiable Instrument Act. The case of the petitioner is that the evidence on the side of the complainant has already been closed and the case is now at the stage of questioning under Section 313 of the Code of Criminal Procedure. It is the further case of the petitioner that the complaint, as on today is prosecuted against three accused persons (A1, A3 and A5) and it has been quashed for the other accused persons. The grievance of the petitioner is that A5 was not present for several hearings and a non-bailable warrant came to be issued against him and since the same was not executed by the respondent Police, there is absolutely no progress in the proceedings. Therefore left with no other option, the present petition has been filed before this Court.

4. This Court passed an order on 23.02.2021 directing the seventh respondent who is the Inspector of Police to be present before this Court. He is also present at the time of hearing today. The learned Additional Public Prosecutor on instructions submitted that A5 is presently residing at Ahmadabad and he has very serious ailments which prevents him from moving out of Ahmadabad. The learned counsel appearing on behalf of A5 also reiterated this fact and he submitted that one of his leg has also been amputated and he is not in a position to move from Ahmadabad considering the present pandemic situation.

5. The learned counsel appearing for the petitioner submitted that A1 and A3 are present during every hearing date and the case is at the Stage of questioning under Section 313 of the Code of Criminal Procedure. The learned counsel submitted that the petitioner is more concerned about the disposal of the case within a reasonable time and it should not get delayed due to the absence of A5.

6. This Court has carefully considered the submissions made by the learned counsel on either side and the materials available on record.

7. This Court has taken judicial notice of the fact that A5 is facing serious health problems and he is residing at Ahmadabad and he is not able to immediately move from Ahmadabad to Chennai. There is a non-bailable warrant pending against him. In order to ensure that there is no delay in proceeding further with the case, this Court has to now strike a via media and ensure that the case proceeds further even in the absence of the personal presence of A5, who can be effectively represented by a counsel.

8. The counsel representing A5 before the Court below is directed to immediately file an application under Section 205 of the Code of Criminal Procedure seeking for dispensing with the appearance of A5 and permit him to be represented through a counsel. While filing the application, all the necessary medical records shall also accompany the application. The Court below is directed to entertain the application and allow the application after recalling the non-bailable warrant and permit A5 to be represented by a counsel.

9. The Court below shall thereafter permit A5 to answer the questions under Section 313 of the Code of Criminal Procedure, by way of an affidavit to be filed through the counsel representing A5 before the Court below. Such a procedure has been permitted and recognised by the Hon'ble Supreme Court in Keyamukherjee v. Magma Leasing Limited, reported in 2008 (2) MLJ Cr1 654. This judgment shall be taken into account by the Court

below while permitting A5 to answer the 313 questioning through affidavit. On completion of this process, the Court below can proceed to hear the case finally in the absence of any defence witness and dispose of the complaint. At the time of passing the final judgment, the Court below can insist for the appearance of A5 in person.

10. If the above procedure is followed, the Court below will be able to complete the proceedings even without the personal presence of A5, who will be allowed to be represented by a counsel. The Court below shall dispose of the proceedings within a period of two months from the date of receipt of a copy of this order.

11. These Criminal Original Petitions are disposed of with the above direction.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Metropolitan Magistrate,
FTC-1, Allikulam, Egmore, Chennai.
2. The Inspector of Police,
R1 Mambalam Police Station,
No.1, Madley Road, T.Nagar,
Chennai 600 017.
3. The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

+1cc to Mr.R.Chandramohan, Advocate, SR.No.12662.

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GPL (CO)
CSR 01.04.2021