

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P.No.15725 of 2016

and Crl.M.P.No.7722 of 2016

K.Senthil

Petitioner

vs.

Nachammal

Respondent

Criminal Original Petition filed u/s 482 Cr.P.C. to direct the trial Court namely learned Judicial Magistrate, Avinashi to re-open the case for the cross examination of the respondent herein pending judgment in C.C.No.45 of 2009.

For petitioner

Mr.M.Vijayakumaran

ORDER

This petition has been filed to direct the trial Court, namely learned Judicial Magistrate, Avinashi to re-open the case for the cross examination of the respondent pending judgment in C.C.No.45 of 2009.

2. Heard the learned counsel for the petitioner.

3. It is seen that this petitioner is facing trial in C.C.No.45 of 2009 before the Judicial Magistrate, Avinashi for an offence under Section 138 of the Negotiable Instruments Act. While so, on 30.05.2016, the trial Court closed the defence side and posted the case for defence arguments to 04.07.2016 and on 04.07.2016, the case was posted for judgment to 11.07.2017. Again on 11.07.2016, since the petitioner did not appear before the trial Court, Non-bailable warrant was issued against him and the case was posted to 01.08.2016 for judgment. While so, it appears that the petitioner filed a petition in person on 01.07.2016 before the trial Court for re-opening the case and recalling P.W.1 for the purpose of cross examination.

4. The petitioner/accused is represented by the learned Advocate on record and during the subsistence of the memo of appearance, the petitioner filed the above petition in person on account of boycott of Courts. The Supreme Court in Harish Uppal [Ex.Capt.] Vs Union of India reported in [2003] 2 SCC 45, has held that boycott of Courts is illegal and the Courts should not encourage such boycott. Therefore,

the Magistrate was perfectly justified in not entertaining the petition without revocation of the Vakalat. However, the learned counsel submitted that the petitioner/accused has not cross examined P.W.1 at all and therefore, he requires a fair opportunity to cross examine P.W.1.

5. Be that as it may, if either the counsel files an application for re-opening and recalling or if the party-in-person revokes the Vakalat and files a petition for re-opening or recalling, the Judicial Magistrate, may entertain the same and pass orders in accordance with law.

With the above direction, this petition is closed. Connected M.P. is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

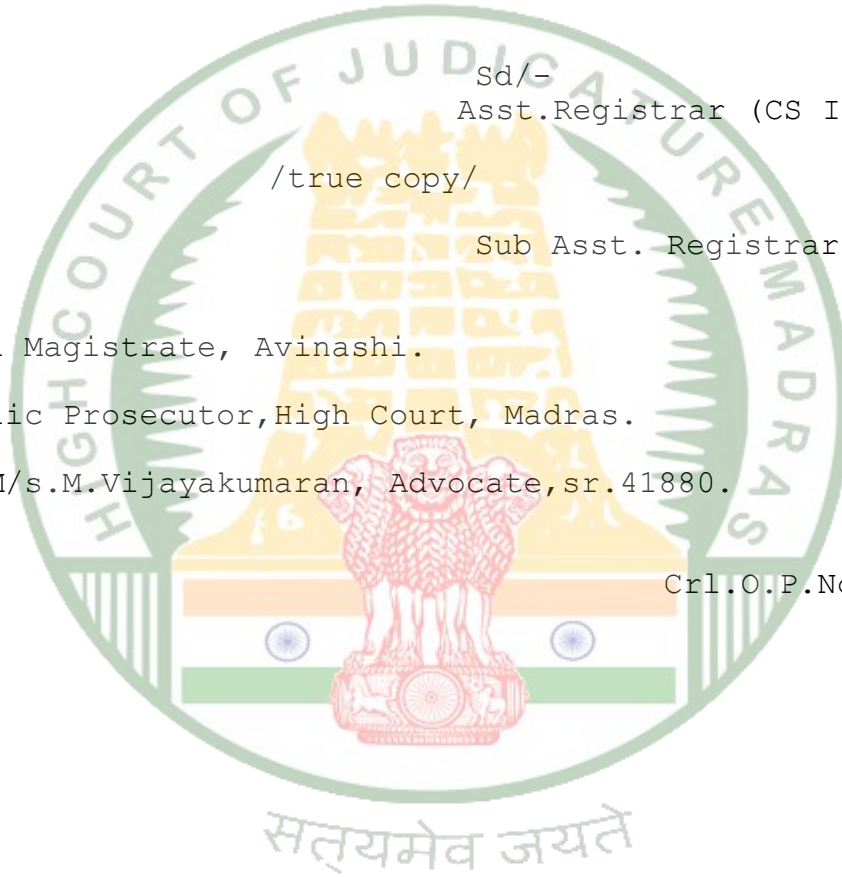
1.Judicial Magistrate, Avinashi.

2.The Public Prosecutor,High Court, Madras.

+1 cc to M/s.M.Vijayakumaran, Advocate,sr.41880.

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