

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.OP No.24143 of 2015
M.P.No.1 of 2015

1.Sivaram Spinners
rep by its Managing Partner A.Sivaram
Regd Office at Old D.No.6-A, New D.No.8
Kuppanna Gounder Street
Anupperpalayam Pudhur
Tiruppur 641 652.

2.A.Sivaram
3.S.Kalaivani ... Petitioners

Vs

Jayam & Co
Proprietor S.Raama Moorthi
Office at D.No.6, Singaravelan Nagar
3rd Street, Angeripalayam Road
Gandhi Nagar (P.O.)
Tiruppur - 641 603
Rep. by Power Agent: S.Ganeshkumar ... Respondent

Prayer:- Criminal Original Petition filed under Section 482
Cr.P.C., to set aside the order dated 21.09.2015 made in
C.M.P.No.7517 of 2015 in C.C.No.132 of 2013 on the file of the
Fast Track Judge (Magistrate Level), Tiruppur.

For Petitioners : Mr.M.Guruprasad

For Respondent : Mr.S.Shankar

O R D E R

This petition has been filed to set aside the order dated
21.09.2015 made in C.M.P.No.7517 of 2015 in C.C.No.132 of 2013
on the file of the Fast Track Judge (Magistrate Level), Tiruppur.

2. For the sake of convenience, the petitioners and the
respondent are referred to as accused and complainant
respectively.

3. The complainant initiated prosecution in C.C.No.132/2013 against the accused for offence u/s 138 of the Negotiable Instruments Act and the same is now pending on the file of Fast Track Court, [Magistrate level], Tiruppur. The complainant examined his witnesses and thereafter, the accused was questioned u/s 313 Cr.P.C. The case was posted for arguments on 10.09.2015. Thereafter, it was adjourned to 12.09.2015 for judgment. At that juncture, on 11.09.2015, the petitioners filed three applications seeking advance hearing, re-opening of the case and u/s 315 Cr.P.C. to examine the second petitioner and other persons as a defence witness. The trial Court was pleased to allow the applications and permitted only the second petitioner to be examined as a defence witness by order dated 12.09.2015. Thereafter, the second petitioner was examined-in-chief as D.W.2 on 14.09.2015. At that juncture, the second petitioner filed an application in CMP No.7517/2015 u/s 65A and 65B of the Evidence Act for permitting him to mark certain electronic records as evidence. The trial Court heard both sides and has dismissed the application on 21.09.2015, challenging which the accused is before this Court.

4. Heard the learned counsel for the accused/petitioners and learned counsel for the respondent/complainant.

5. The trial Court has dismissed the petition on the ground that the Certificate relating to Section 65B has not been given by the authorised person. Apart from that, the trial Court has stated that the petition has been filed at the fag end of the trial in order to protract proceedings.

6. On a reading of the affidavit filed by the accused in support of C.C.No.7517/2015, it is seen that the accused has merely catalogued the various digital evidence, but has not stated as to how that evidence is relevant within Sections 5 to 55 of the Indian Evidence Act. As regards Section 65A and 65B of the Act, they fall within the chapter "Admissibility of evidence", which question can be looked into by Court only after the first test is cleared. In this case, the accused/petitioner has not made out any case before the trial Court as to how the electronic evidence available with them is relevant for the just decision of the case.

Under such circumstances, for different reasons, the order passed by the trial Court is hereby confirmed and the petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

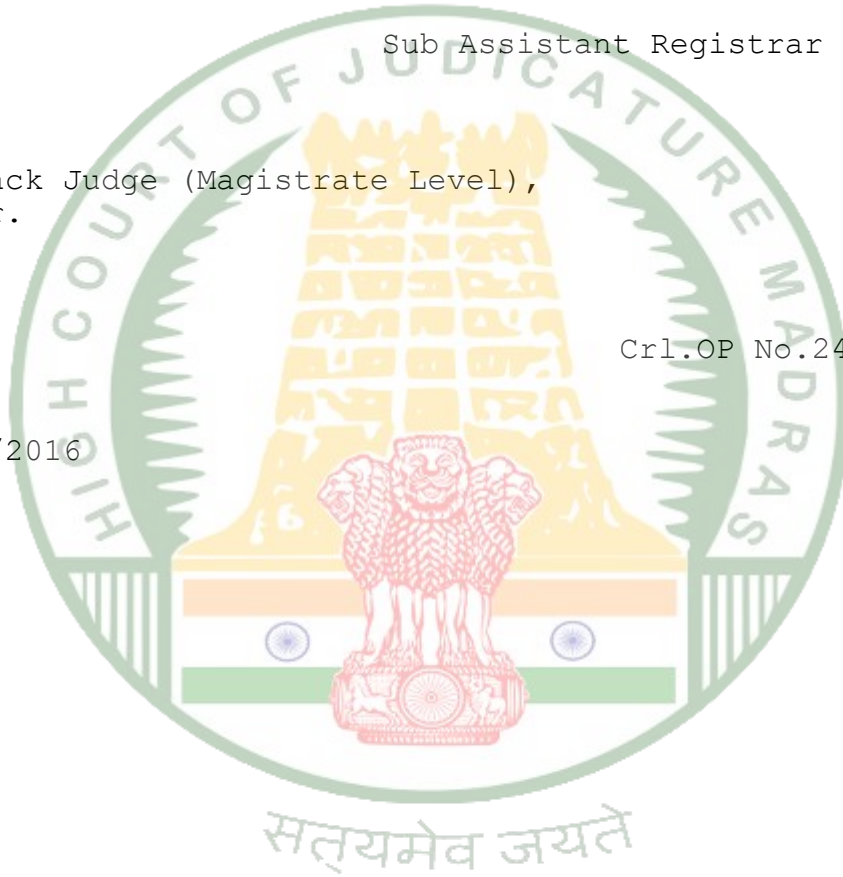
Sub Assistant Registrar

To

1.Fast Track Judge (Magistrate Level),
Tiruppur.

Crl.OP No.24143 of 2015

ctk[col]
srg 29/07/2016



WEB COPY