

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2016

CORAM:

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

Crl.O.P. No. 25336 of 2016 & Crl.M.P. Nos.12291 and 12292 of 2016

V. Dwarakanathan

Petitioner

vs.

S. Prakash

Respondent

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records proceedings in C.C. No.83 of 2002 pending on the file of the Judicial Magistrate No.III, Salem and quash the same insofar as the petitioner is concerned.

For petitioner Mr. B. Ravi Raja

ORDER

This Criminal Original Petition has been filed seeking to call for the proceedings in C.C. No.83 of 2002 pending on the file of the Judicial Magistrate No.III, Salem and quash the same insofar as the petitioner..

2 S. Prakash, the respondent herein, initiated prosecution in C.C.No.83 of 2002 before the Judicial Magistrate Court No.III, Salem, under Section 138 of the Negotiable Instruments Act, 1881, against Premier Electronics, a partnership firm and 6 others who were said to be partners in the said firm. Challenging the said prosecution, Dwarakanathan (A4) is before this Court.

3 Mr. Ravi Raja, learned counsel for Dwarakanathan (A4) submitted that the Trial Court had discharged A3 to A6 and A7 from the prosecution as early as 25.04.2003 and therefore, when the petitioner filed an application for similar relief in Crl.M.P. No.54 of 2014 before the Trial Court, the same was dismissed on 31.08.2016, wherein, the Judicial Magistrate Court No.III, Salem, has stated that she has no jurisdiction to discharge the accused and that the accused can approach only the High Court under Section 482, Cr.P.C.

4 This Court perused the order dated 31.08.2016 passed by the Judicial Magistrate Court No.III, Salem in CrI.M.P. No.54 of 2014 and this Court is in complete agreement with the analysis of law on the point by the Magistrate. This Court places on record its appreciation for the understanding of the law on the subject by the Magistrate which is reflected in the order dated 31.08.2016.

5 However, on a perusal of the complaint, it is seen that the complainant has clearly stated that Dwarakanathan (A4) was a partner in the first accused firm and that he also participated in the day-to-day administration of the business of the firm. Thus, the minimum averment as required under Section 141 of the Negotiable Instruments Act, is available in the complaint and therefore, the same cannot be interfered with.

6 Mr. Ravi Raja, learned counsel for Dwarakanathan (A4) contended that Dwarakanathan (A4) has retired from the partnership firm much earlier.

7 In the considered opinion of this Court, that is also a question of fact, which has to be looked into only by the Trial Court.

8 Mr. Raviraja, learned counsel, submitted that the presence of Dwarakanathan (A4) may be dispensed with before the Trial Court as he is very weak and physically indisposed.

9 Acceding to the said submission, Dwarakanathan (A4) is directed to surrender before the trial Court within two weeks from the date of receipt of a copy of this order and on his surrender, he shall be released on bail on the same day, on he furnishing a bond for a sum of Rs.10,000/- [Rupees ten thousand only] without sureties. Thereafter, his presence before the trial Court shall be dispensed with on condition that, he shall be present for receiving the complaint, for answering the charge, at the time of questioning under Section 313, Cr.P.C. and at the time of passing judgment. He shall file an affidavit of undertaking before the Trial Court that he will not dispute his identity and that the counsel named by him in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015 (1) MLJ (CrI.) 288]. If he adopts any dilatory tactics, it is open to the Trial Court to insist upon his presence and remand him to custody, as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If, thereafter, he absconds, the trial Court shall direct registration of an FIR against them u/s 229-A IPC.

This Criminal Original Petition stands dismissed with the above directions. Connected CrI.M.Ps. are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

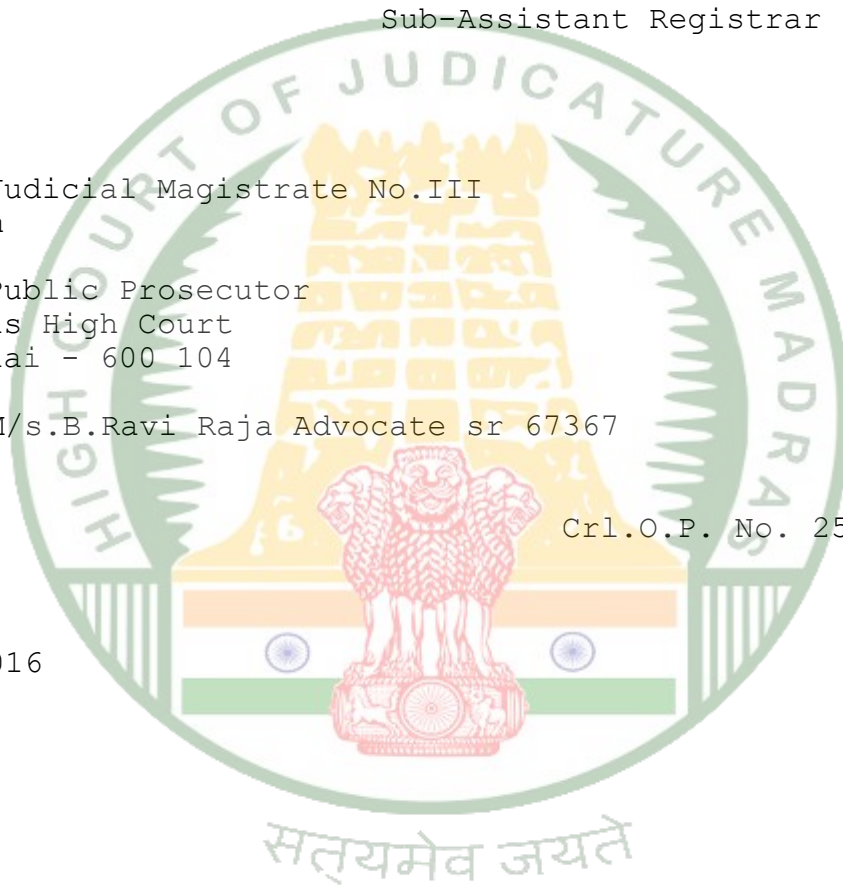
1 The Judicial Magistrate No.III
Salem

2 The Public Prosecutor
Madras High Court
Chennai - 600 104

+1 cc to M/s.B.Ravi Raja Advocate sr 67367

CrI.O.P. No. 25336 of 2016

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