

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.No.25318 of 2009

Subbiayan

..

Petitioner

Vs

Shanmugasundaram

..

Respondent

Prayer:- Criminal Original Petition filed under Section 482 of Crl.P.C., to call for records in C.C.No.159 of 2007 on the file of the learned Judicial Magistrate, Mettupalayam, peruse and quash the proceedings.

For Petitioner : M/s.R.Sreerangam

For Respondent : M/s.B.Gopalakrishnan

ORDER

This petition has been filed praying to call for records in C.C.No.159 of 2007 on the file of the learned Judicial Magistrate, Mettupalayam, peruse and quash the proceedings.

2. The learned counsel for the petitioner submits that the one Chinnasamy has filed C.C.No.159 of 2007 on the file of the learned Judicial Magistrate, Mettupalayam, alleging offence under section 138 of Negotiable Instruments Act. The case of the petitioner/accused is that the original complainant Chinnasamy was died. Thereafter, the legal heirs without impleading themselves, appointed the respondent viz., Shanmugasundaram as their Power of Attorney to represent them without seeking any permission from Court. Further, the respondent, as the Power of Attorney of the legal heirs of the deceased, has filed petition u/s.256 Cr.P.C. in C.M.P.No.1939 of 2008 for amendment and to continue the prosecution, which is not permissible in law. However, the said petition was allowed under orders dated 13.05.2008.

3. Learned counsel for petitioner has relied on the judgment reported in **AIR 2005 Supreme Court 48 in Jimmy Jahangir Madan, Appellant V. Bolly Cariyappa Hindley (deceased by L.Rs) Respondents**, in which the Hon'ble Supreme Court has directed the LR's of the complainant to approach the Court and filed an application to permit the LR's to substitute the Power of Attorney to represent the case on behalf of them. In this case, the application filed under Section 256 of Cr.P.C by the Power

of Attorney is not permissible as per the judgment of the Hon'ble Supreme Court.

4. In view of the above, this Court set aside the order of Court below allowing petition u/s.256 of Cr.P.C., under order dated 13.05.2008. The matter is remanded back to the learned Judicial Magistrate, Mettupalayam, for fresh consideration and the Court below is directed to permit the legal heirs of the deceased to file an application seeking permission to appoint the respondent as their Power of Attorney to represent them and proceed with the main case in C.C.No.159 of 2007. The learned Judicial Magistrate, Mettupalayam, is directed to dispose the main case within a period of three months thereafter.

5. Accordingly, this Criminal Original petition is disposed of.

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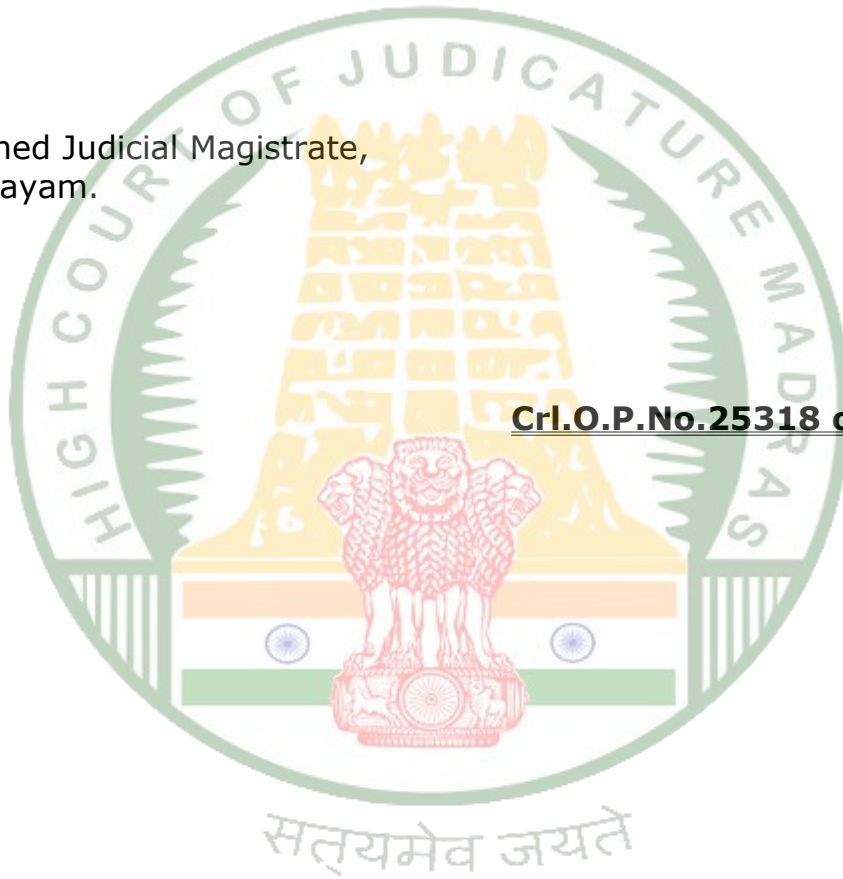
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M.V.MURALIDARAN,J.
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To

The learned Judicial Magistrate,
Mettupalayam.



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