

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.20177 of 2018
and CRL.M.P.Nos.10772 & 10773 of 2018

R.K.Vijay

.. Petitioner

Vs

G.Nandakumar

.. Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order dated 06.08.2018 made in C.M.P.No.1368 of 2018 in C.C.No.312 of 2016 (on the file of the Court of Judicial Magistrate/Fast Track Magistrate Level), Alandur, Kancheepuram District and allow this Criminal Original Petition.

For Petitioner : Mr.N.S.Sivakumar

O R D E R

The petitioner is facing a prosecution in C.C.No.312 of 2016 before the Judicial Magistrate, Fast Track Court, Alandur, for the offence under Section 138 of Negotiable Instruments Act, 1881. After the evidence of the prosecution was closed, the petitioner filed Crl.M.P.No.1368 of 2018 in C.C.No.312 of 2016, under Section 315 Cr.P.C., for examining himself as witness. The said petition has been dismissed by the trial Court on 06.08.2018, challenging which, the accused is before this Court.

2.This Court is not ordering any notice on the respondent/complainant in this petition, because, that will only further delay the trial. The accused is entitled to examine himself as a witness in the criminal trial by waiving his right of silence under Section 315 Cr.P.C. When, once an accused waives his right of silence and examines himself, he can be subjected to cross by the other side and he is bound to answer all the questions put to him in cross. At this juncture, he cannot plead any right of silence. Under Section 139 of Negotiable Instruments Act, the accused is required to discharge the burden.

3.The reasons given by the trial Court for disallowing the request of the accused to examine himself as a witness, is not sustainable. Hence, the order dated 06.08.2018 passed in

CrI.M.P.No.2018 in C.C.No.312 of 2018, is hereby set aside. However, in the guise of examining himself as witness, the accused cannot call for any documents under Section 91 Cr.P.C. In the peculiar facts and circumstances of the case, he can only mark the documents which are admissible and relevant.

4. Accordingly, this petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

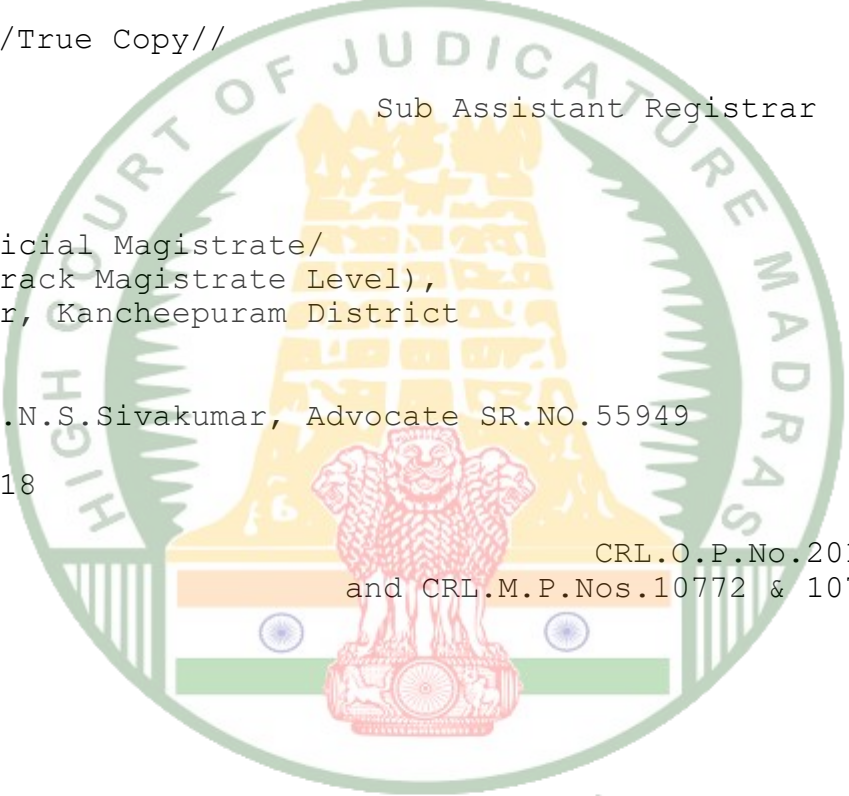
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To

1. The Judicial Magistrate/
Fast Track Magistrate Level),
Alandur, Kancheepuram District

+1cc to Mr.N.S.Sivakumar, Advocate SR.NO.55949

sm:31.8.2018

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