

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.20835 of 2018

S.Murali

.. Petitioner

Vs

C.H.Brahmananda Reddy

.. Respondent

Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records and set aside the order dated 09.02.2018 passed in Crl.M.P.No.1311 of 2017 in C.C.No.2843 of 2010 on the file of learned Metropolitan Magistrate, FTC-I, Egmore at Allikulam, Chennai-3 and direct the trial Court to examine the handwriting expert Mr.Kasi, Assistant Director [retired], Document Expert as a defence witness [DW2] and mark his opinion as defence exhibit on a date fixed by this Hon'ble Court.

For Petitioner : Mr.G.Ravikumar

ORDER

This petition has been filed to set aside the order dated 09.02.2018 passed by the learned Metropolitan Magistrate, FTC-I, Egmore at Allikulam, Chennai-3 in Crl.M.P.No.1311 of 2017 in C.C.No.2843 of 2010.

2.Heard the learned counsel for the petitioner and perused the materials placed on record.

3.For the sake of convenience, the parties will be referred to as complainant and accused. The complainant has initiated a prosecution in C.C.No.2843 of 2010 under Section 138 of Negotiable Instruments Act, 1881, against the accused and the same is now pending on the file of the FTC-I, Allikulam, Chennai. It is the case of the accused that he had entered into a Memorandum of Compromise dated 05.08.2011 with the complainant in relation to the impugned cheque. The complainant was cross-examined on this Memorandum of Compromise by the accused and the complainant stated that the signature in the Memorandum of

Compromise is not of his. In 313 examination, the accused has reiterated about the Memorandum of Compromise. Since the complainant had disputed his signature in the Memorandum of Compromise, the accused obtained some admitted signatures of the complainant and sent the same along with the disputed signature in the Memorandum of Compromise to one Mr.Kasi, an handwriting expert, who had retired from the Tamil Nadu Forensic Science Department. Mr.Kasi had compared the signatures in the disputed document with the signatures in the admitted document and has given a report dated 20.10.2016 to the effect that both the signatures are of the same person. The accused wanted to mark the report of the handwriting expert as a defence document, when he examined himself as DW1. However, the trial Court had not permitted him to mark, because he was not the author of the report. The accused filed CrI.M.P.No.1311 of 2017 in C.C.No.2843 of 2010 to examine Mr.Kasi as defence witness, in order to prove the report. The trial Court by order dated 09.08.2018, has dismissed the petition on the very specious reasoning, which is as under :

"Record perused carefully. The petitioner has chosen himself to approach a retired handwriting expert and to obtain a opinion from him, without the leave of the Court, which is highly against the procedural law. When the accused requires an opinion from the handwriting expert for the documents relevant to the complaint, he has to file necessary application before this court and without the leave of court, the petitioner cannot adopt his own procedure to get a report in favour of him."

4.Under normal circumstances, this Court would have issued notice to the complainant in this petition. However, since the reasoning given by the trial Court is ex facie unsustainable in law, this Court has dispensed with the issuance of notice to the complainant in this petition. The trial Court is of the view that the opinion of an expert can be obtained only through the Court. This view of the trial Court is erroneous. The evidence of an expert is relevant under Section 45 of the Evidence Act, 1872. It is a trait law that the evidence of an expert is not a substantive piece of evidence in respect of a fact in issue, but is only a relevant fact. It is not necessary for a party to obtain an opinion from an expert only through the medium of Court. Of course, it is open to the trial Court to appreciate the evidence of an expert in terms of the definition of the word proved and disproved given in Section 3 of the Evidence Act, 1872. The trial Court ought not to have rejected the plea of the accused on the aforesaid ground. Hence, this petition is allowed and the order dated 09.02.2018 in CrI.M.P.No.1311 of

2017 in C.C.No.2843 of 2010 is hereby set aside and the matter is remanded a fresh to the trial Court for reconsideration, in the light of what has been expatiated above.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gya

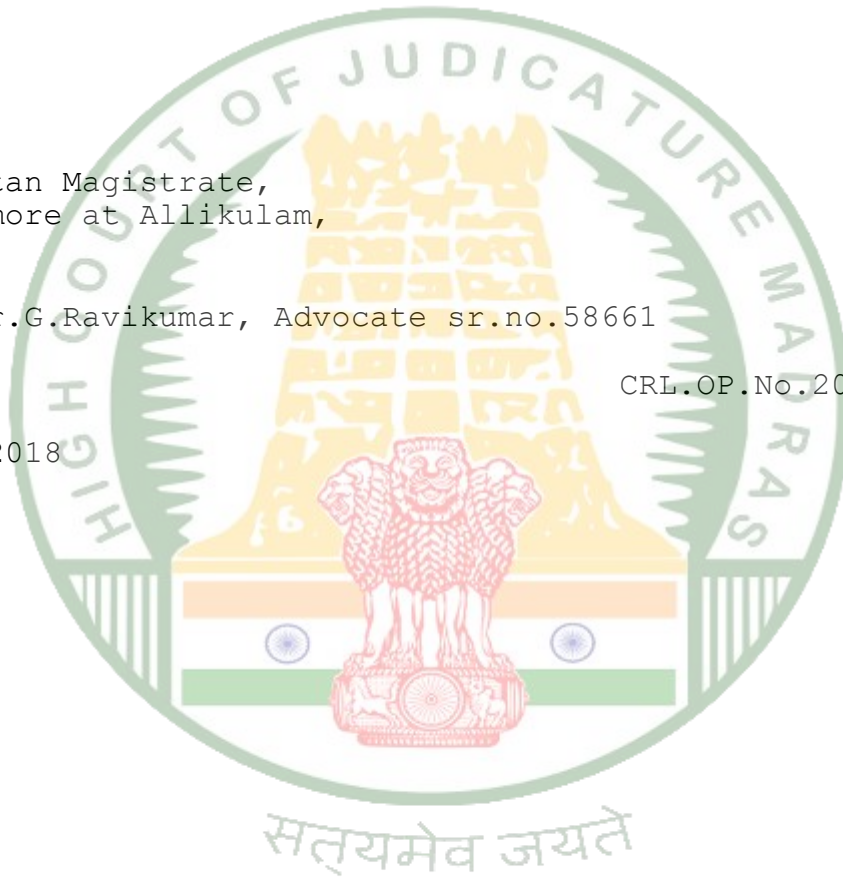
To

Metropolitan Magistrate,
FTC-I, Egmore at Allikulam,
Chennai

+2cc to Mr.G.Ravikumar, Advocate sr.no.58661

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