

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.18655 of 2018

CRL.M.P.No.9834 of 2018

R. Chinnasamy Naidu

..Petitioner/Accused

Vs

M. Sathyanathan

..Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C., to set aside and recall the warrant issued by the Learned Judicial Magistrate, Fast Track [Magistrate Level], Alandur, dated 30.05.2018 in Crl.M.P.No.1022 of 2018 in C.C.No.67/2017.

For Petitioner : Mr. S. Suresh

O R D E R

This Criminal Original Petition has been filed to set aside and recall the warrant issued by the learned Judicial Magistrate, Fast Track [Magistrate Level], Alandur, by order dated 30.05.2018 in Crl.M.P.No.1022 of 2018 in C.C.No.67 of 2017 and thus render justice.

2. For the sake of convenience, the petitioner and the respondent will be referred to as the accused and the complainant respectively.

3. The accused is facing a prosecution in C.C.No.67 of 2018 under Section 138 of the Negotiable Instruments Act before the Judicial Magistrate Court, Alandur, Chennai. On 30.05.2018, the trial Court has passed the following order:

"Complainant present. Accused continuous absent. Hence, in the interest of justice, 317 dismissed. Issue Non Bailable Warrant against accused. Accused was absent for many hearings and has recalled his warrants more than once. The case stands posted for P.W.1 cross. Accused Non Bailable Warrant issued. Call on 02.07.2018."

Challenging the above said order, this petition has been filed.

4. Heard Mr.S.Suresh, learned counsel for the accused.

5. Under normal circumstances, this Court would have ordered notice on the respondent in this petition. However, if notice is ordered on the respondent, the trial will get further prolonged and that would cause undue prejudice to the complainant. It is seen that the accused has been continuously absent for some time before the trial Court, however, he is being represented by an Advocate. On 17.05.2018, the accused was absent and a petition under Section 317 Cr.P.C. was filed and allowed. Learned counsel for the accused began the cross-examination of P.W.1. On that day, the cross-examination of P.W.1 was not completed and therefore, the case was adjourned to 30.05.2018. On 30.05.2018, the trial Court has passed the above order. The accused has filed along with the typed set of papers, a certified copy of Section 317 Cr.P.C. petition that was filed on 30.05.2018. On a reading of the petition, it is seen that the accused has clearly given the following undertaking :

"The accused herein has given directions to the counsel, to continue the cross-examination of P.W.1, in his absence."

6. Admittedly, this is not a prosecution for a blue-collar offence, where physical identification of the accused by the witness may be required. This is a prosecution under Section 138 of the Negotiable Instruments Act, where the parties have had money transactions. In such view of the matter, the trial Court could have condoned the absence of the accused and could have proceeded with the cross-examination of P.W.1 by the learned counsel for the accused.

7. In the result, this petition is allowed and the order dated 30.05.2018 passed by the Judicial Magistrate, Fast Track [Magistrate Level], Alandur in CrI.M.P.No.1022 of 2018 in C.C.No.67 of 2017 is set aside. The petitioner is directed to surrender before the trial Court within two weeks from the date of receipt of a copy of this order and file an application under Section 436 Cr.P.C. The trial Court is directed to release the petitioner on bail on the same day on he executing a bond for Rs.25,000/- with two sureties each to the satisfaction of the trial Court. If thereafter, the petitioner absconds, a fresh FIR can be registered against him under Section 229-A IPC. The petitioner shall pay a cost of Rs.10,000/- to P.W.1 and further cross-examination of P.W.1 shall continue on the day fixed by the trial Court. Boycott of Courts shall not be a

reason for not cross-examining P.W.1 when he appears for giving evidence. P.W.1 will be entitled to refresh his memory by reading his earlier examination-in-chief and cross-examination.

With the above direction, this petition is ordered.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

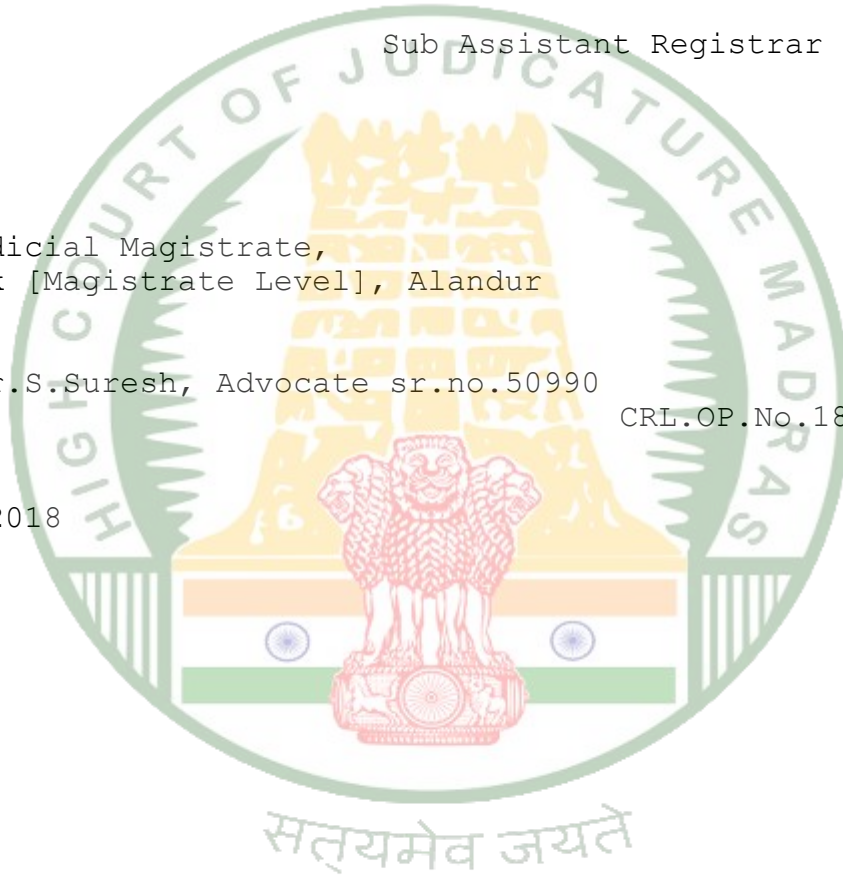
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To
1.The Judicial Magistrate,
Fast Track [Magistrate Level], Alandur
Chennai.

+1cc to Mr.S.Suresh, Advocate sr.no.50990

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