

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.O.P No.20614 of 2019
and CrI.MP No.10598 of 2019

Ramesh

... Petitioner

vs.

Stanley Raajan

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set-aside the order dated 08.07.2019 passed in C.M.P.No.2165 of 2019 in C.C.No.7 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court, Alandur and allow the petition filed u/s 315 of Cr.PC seeking to permit the petitioner to give evidence.

For Petitioner : Mr.Subramani.S.N.

For Respondent : Mrs.A.Rajeswari Karthikeyan

ORDER

This Criminal Original Petition has been filed challenging the order passed by the Court below, dismissing the application filed by the petitioner under Section 315 of Cr.PC, to permit the petitioner to get into the box and depose as defence witness.

2. The respondent has filed a complaint against the petitioner for an offence under Section 138 of Negotiable Instrument Act. The case is at the stage of trial and the examination on the side of the complainant is already completed and the case is now at the stage of defence evidence.

3. The petitioner filed an application under section 315 of Cr.PC to examine himself as the defence witness. This petition was dismissed by the Court below on the ground that the petitioner is dragging on the proceedings by filing one petition after another and this petition came to be filed only at the stage of the final arguments.

4. The learned counsel for the petitioner submitted that the petitioner must be given an opportunity to defend his case and therefore, he wants to examine himself and his wife as defence witnesses in this case. The learned counsel further submitted that the petitioner undertakes not to drag on the proceedings any more and the petitioner will co-operate for the completion of the proceedings, within the time limit stipulated by this Court.

5. The learned counsel appearing on behalf of the respondent submitted that the case is kept pending for the last three years and intentionally, the petitioner is dragging on the proceedings by filing one petition after another. The learned counsel further submitted that the petitioner has now filed another application before the Court below under Section 311 of Cr.PC to call his wife as a witness on the side of the defence. The learned counsel therefore submitted that there are no grounds to interfere with the order passed by the Court below and that this petition is liable to be dismissed.

6. This Court has carefully considered the submissions made on either side and also the materials available on record.

7. It is seen that the petitioner has not filed any petition earlier seeking for examination of defence witnesses. The petition that was filed for the first time before the Court below under Section 315 of Cr.PC, has been dismissed only on the ground that the case is being dragged on for the last three years. In view of the presumption under Section 139 of Negotiable Instrument Act, the petitioner must be given an opportunity to rebut the presumption. For this purpose, the petitioner wants to examine himself and his wife as witnesses on the side of the defence.

8. This Court is of the considered view that one last opportunity can be given to the petitioner to examine himself and his wife as witnesses, on the side of the defence.

9. In view of the above, the order passed by the Court below in C.M.P.No.2165 of 2019 dated 08.07.2017, is hereby set aside. The petitioner and his wife are directed to be present before the Court below on 28.08.2019. Both of them shall be examined in Chief on the same day and they shall be cross-examined on the same day. Thereafter, the Court below can fix a time for the final arguments and complete the proceedings. It is made clear that if the petitioner does not examine himself and / or his wife on 28.08.2019, the petitioner shall forfeit his right to examine witnesses on the side of the defence, thereafter.

10. This Criminal Original Petition is disposed of with the above directions and the Court below is directed to complete the proceedings in C.C.No.7 of 2017, within a period of two months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is also closed.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

To

1. The learned Judicial Magistrate,
Fast Track Court, Alandur

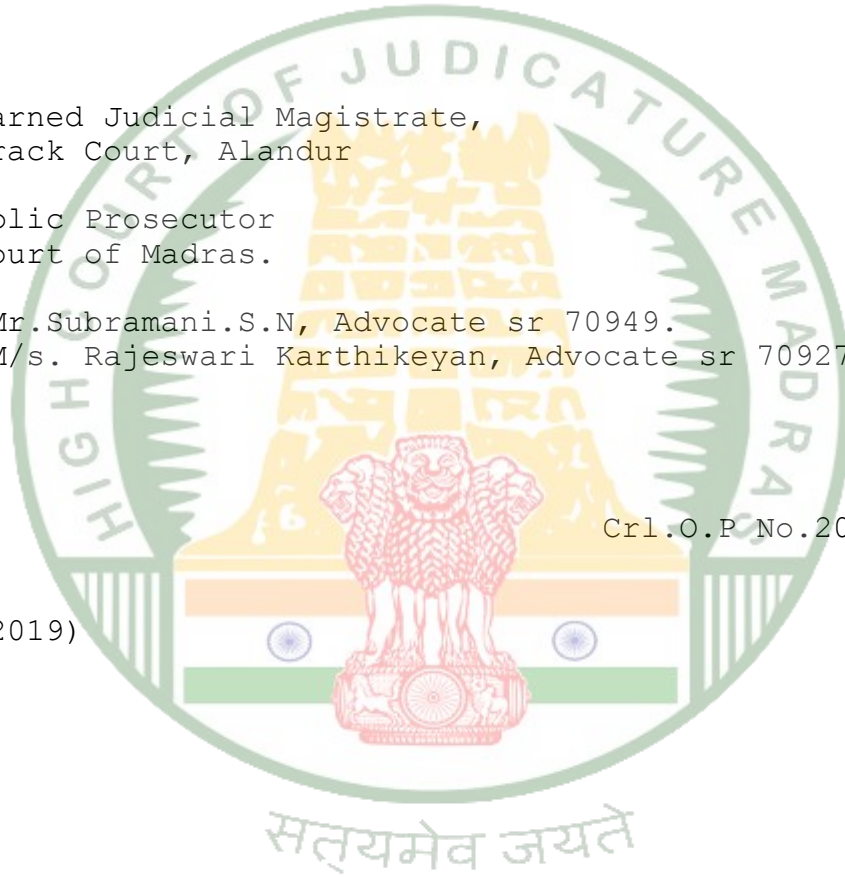
2. The Public Prosecutor
High Court of Madras.

+1 CC to Mr.Subramani.S.N, Advocate sr 70949.

+1 CC to M/s. Rajeswari Karthikeyan, Advocate sr 70927.

Crl.O.P.No.20614 of 2019

NMI (CO)
SP(22/08/2019)



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