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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P.Nos.14410 and 14411 of 2023
and Crl.MP.No.8937 of 2023

V.Palanisamy

... Petitioner
in both WPs

Vs.

Maduraiveeran

... Respondent
in both WPs

Common Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in CMP.No.4354 of 2023 and CMP.No.4353 of 2023 in C.C.No.437 of 2021 and set aside the order dated 05.06.2023, passed by the learned Judicial Magistrate, Additional Mahila Court, Namakkal.

For Petitioners
(Both Wps)

: Mr.K.Selvakumar
Mr.S.T.Bharathi Gowtham

For Respondent
(Both Wps)

: Mr.R.Prabakar

COMMON ORDeR

These petitions have been filed against the order passed by the Court below in CMP Nos.4353 of 2023 and 4354 of 2023 in CC.No.437 of 2021, seeking for reopening and recalling PW.1 for cross examination.



WEB COPY 2. When the matter came up for admission on 07.7.2023, this Court passed the following order:

Notice to the respondent, returnable by 24.07.2023. Private notice is also permitted. The petitioner is permitted to serve notice on the counsel appearing on behalf of the respondent before the Court below.

2. On carefully going through the orders passed by the Court below, this Court does not find any apparent irregularity or infirmity in the order passed by the Judicial Magistrate, Additional Mahila Court, Namakkal. However, the petitioner has not cross examined the respondent and hence the petitioner will not be able to rebut the burden cast under Section 139 of the Negotiable Instruments Act. In order to balance the interest of both the parties, this Court is inclined to give one last chance to the petitioner subject to fulfilling certain conditions.

3. The petitioner is directed to deposit a sum of Rs.50,000/- (Rupees Fifty thousand only) to the credit of C.C.No.437 of 2021 pending before the Judicial Magistrate, Additional Mahila Court, Namakkal on or before 24.07.2023. Subject to this condition, there shall be an order of stay of the proceedings in C.C.No.437 of 2021 on the file of the Judicial Magistrate, Additional Mahila Court, Namakkal, till 24.07.2023. the other conditions will be imposed after the respondent enters appearance.

4. Post the cases under the caption 'for orders' on 24.07.2023. 07.07.2023

3. When the matter was taken up for hearing today, the learned counsel for the petitioner produced the copy of the receipt to substantiate the fact that



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the amount of Rs.50,000/- has been deposited on 21.07.2023, as directed by this Court.

4.Heard the learned counsel for the petitioner and the learned counsel for the respondent.

5.The petitioner had filed two applications for reopening and recalling PW.1 for cross examination. The Court below took into consideration the fact that the petitioner had already filed an application u/s 311 Cr.PC, to recall PW.1 and this petition was allowed by order dated 21.3.2023 by imposing a cost of Rs.1,000/-. This cost was paid by the petitioner. However, when PW.1, appeared before the Court on 29.3.2023, he was not cross examined by the petitioner. Even thereafter, on two other occasions, PW.1, was not cross examined. Hence, the Court below on 27.4.2023 posted the case for arguments. Thereafter, two applications in CMP.Nos.4353 and 4354 of 2023 came to be filed for reopening and for cross examination of PW.1. These applications were dismissed by the Court below by order dated 05.06.2023.



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6. Even when these criminal original petitions were admitted, this Court found that the order passed by the Court below does not suffer from any illegality or infirmity. However, this Court wanted to give one opportunity to the petitioner to cross examine PW.1 since the legal presumption u/s 139 of the Negotiable Instruments Act, 1881 must be rebutted. Only for that purpose, this Court had directed the petitioner to deposit a sum of Rs.50,000/- and this amount has also been deposited.

7. Taking into consideration the facts and circumstances of the case and the conduct of the petitioner, this Court is inclined to interfere with the order passed by the Court below in CMP.Nos.4353 and 4354 of 2023, dated 05.06.2023 and the same is hereby set aside and these criminal original petitions are disposed of with the following directions:

(a) The next date of hearing has been fixed on **28.07.2023**. On that day, PW.1 shall be present before the Court below and he shall be cross examined by the petitioner and the cross examination shall be completed on the same day.

(b) If PW.1 is not cross examined on the next date of hearing, the petitioner will lose his right to cross examine PW.1.



WEB COPY (c) On completion of the cross examination of PW.1, the Court below shall commence the cross examination of the witness on the side of the defence. The cross examination shall be completed on the same day or at the best on the next date of hearing. and ;

(d) The Court below shall dispose of C.C.No.437 of 2021, within a period of **two months** from the date of receipt of copy of the order.

Consequently, connected miscellaneous petition is closed.

25.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
KP

Note: Issue order copy on **27.7.2023**

To
Judicial Magistrate, Additional Mahila Court,
Namakkal.



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N. ANAND VENKATESH, J.
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