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1 of 4



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.15140 of 2023
and Crl.M.P No.9449 of 2023

Usman

Petitioner

vs.

H.Akbar

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the docket order dated 19.04.2023 in C.C.No.2003 of 2019 passed by the II Metropolitan Magistrate Court, Egmore.

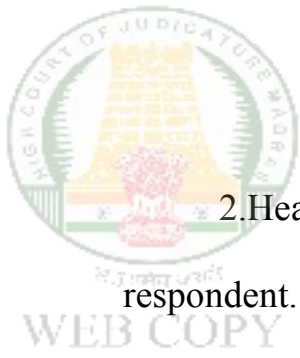
For Petitioners : Mr.V.K.Sathiyamurthy

For Respondent : Mr.M.Hussaini Baskar

ORDER

This petition has been filed challenging the order passed by the learned II Metropolitan Magistrate, Egmore dated 19.04.2023 in C.C.No.2003 of 2019 as follows:

Complainant present. Accused present. On perusal of records. PW1 filed proof affidavit it is not permissible in criminal proceedings. Except 138 NI Act. Hence, PW1 cross stuck done. For complainant side evidence. Call on 28.04.2023.



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

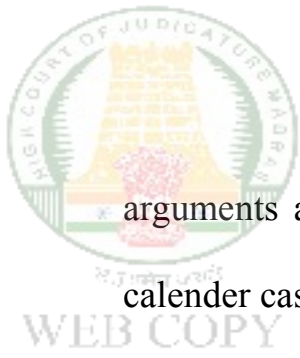
3. When the matter came up for hearing on 07.07.2023, this Court passed the following order:

*Notice to the respondent returnable by 21.07.2023.
Private notice is also permitted.*

2. It is seen from records that the entire trial was completed and the case was at the stage of passing judgment. At this stage, the Court below has proceeded to strike down the entire cross examination and has called for examination of the complainant afresh. On the face of it, the procedure that has been adopted by the Court is unsustainable. In view of the same, there shall be an order of stay of proceedings in CC No.2003 of 2019 on the file of II Metropolitan Magistrate court, Egmore, till 21.07.2023.

3. Post this case under the caption for orders on 21.07.2023.

4. The learned counsel for the petitioner as well as the learned counsel for the respondent in unison submitted that a fair trial has been conducted by the Court below and there is no need to once again put the complainant in the witness box for fresh examination. Hence, both the counsel submitted that they will make their final



arguments and the Court below can proceed further to pass final judgment in the calendar case.

5. In the considered view of this Court, the Court below has taken a hyper-technical stand by eschewing the entire evidence of PW1 by order dated 19.04.2023. Ultimately, the proof affidavit is more in the nature of an examination in chief. It is brought to the notice of this Court that the petitioner had raised some objections at that point of time. But however, the Court below had taken the proof affidavit as examination in chief and had directed the petitioner to cross-examine the witness. Accordingly, PW1 has been cross-examined on the side of the petitioner. Therefore, it is not appropriate to strike down the evidence of PW1 which has already been recorded in full. The procedure is only a hand maid of justice and unless a serious prejudice is shown, the Courts must adopt a practical approach to ensure that proceedings are completed expeditiously.

6. In the light of the above discussion, the order passed on 19.04.2023 to strike down the evidence of PW1, is hereby set aside. Likewise, the examination of PW1 once again on 16.06.2023 also stands eschewed. There shall be a direction to both sides to submit their final arguments before the Court below and the Court below shall dispose of the case on its own merits and in accordance with law.



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4 of 4



N. ANAND VENKATESH,. J.

SSR

7.This criminal original petition is accordingly allowed and there shall be a direction to the II Metropolitan Magistrate, Egmore, Chennai to dispose of C.C.No.2003 of 2019, within a period of two months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

28.07.2023

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

To

1.The II Metropolitan Magistrate Court, Egmore.

2.The Public Prosecutor,
High Court of Madras,
Madras.

CrI.O.P No.15140 of 2023
and CrI.M.P No.9449 of 2023