



Crl.R.C.No.1235 of 2023
and Crl.M.P.Nos.9674 & 9675 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.R.C.No.1235 of 2023
and
Crl.M.P.Nos.9674 & 9675 of 2023

Meganath Karthick
Proprietor of S.D.Lakshmi & Co., ... Petitioner
Vs.

C.M.Babu
Proprietor of M/s.CMB Traders ... Respondent

Prayer : Criminal Revision Petition filed under Section 397 r/w. 401 of Criminal Procedure Code to set aside the order dated 22.06.2023 in Crl.M.P.No.24531/2023 in S.T.C.No.3072/2023 on the file of the learned Metropolitan Magistrate, Fast Track Court -I at Allikulam, Egmore and consequently allow the Crl.M.P.No.24531/2023 in S.T.C.No.3072/2023.

For Petitioner : Mr.M.Velan

ORDER

The present criminal revision petition has been filed by the accused, challenging the orders dated 22.06.2023 passed in Crl.M.P.No.24531/2023 in S.T.C.No.3072/2023.



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2.The said petition was filed u/s.273 Cr.P.C. to set aside the order dated 30.05.2023 in S.T.C.No.3072/2023 allowing the memo of the complaint to consider the Sworn statement of the complainant as chief examination in the trial proceedings.

3.The respondent/complainant filed a private complaint u/s.200 Cr.P.C. against the accused for an offence punishable u/s.138 of the Negotiable Instruments Act. The Sworn statement was filed by the complainant. After summoning the accused and furnishing records u/s.207 Cr.P.C. the accused was questioned. Since he denied the offence the case was posted for trial. At the time of trial, the complainant filed a memo to consider his Sworn statement already filed by him as chief examination. The said memo was recorded by the Court.

4. The learned counsel for the revision petitioner/accused did not raise any objection for this. However, he did not cross examine the complainant on the same day even though he was present in the Court.



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Thereafter, the complainant closed his evidence and the case was posted on 06.06.2023 for questioning of the petitioner / accused under section 313 Cr.P.C. The accused denied of having committed any offences. Subsequently, he filed Crl.M.P.No.24531/2023 u/s.273 Cr.P.C. stating that the evidence of the complainant cannot be recorded in the absence of the accused. The learned trial court judge after considering the rival submissions of both the parties had observed thus :

"On 30.05.2023 itself learned counsel for the complainant filed memo to treat the sworn affidavit as chief in the main case as well as to treat the exhibits already marked as complainant side exhibits. Said memo was recorded by this Court. Learned counsel for the accused had not chosen to cross-examine the complainant by filing petition u/s.145(2) of NI Act. Learned counsel for the respondent/complainant endorsed no further evidence accordingly complainant side evidence was closed. On the day itself learned counsel for the petitioner/accused had not agitated that in the absence of accused memo was recorded. Thereafter, case was posted to 06.06.2023 for examination of the accused u/s.313(1)(b) of Cr.P.C. on the said day too neither the petitioner/accused nor his counsel made any representation that in the absence



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of petitioner/accused, chief was recorded. Thereafter, case was adjourned to 12.06.2023 and 16.06.2023.

*In both hearings accused did not choose to narrate the same. All of a sudden on 22.06.2023 learned counsel for the accused filed this petition u/s.273 of cr.P.C. and in support of the petition averments filed the judgment reported by the **Hon'ble Apex Court** passed in **Crl.Appeal No.1306/2021** and pointed out the relevant paragraphs stating that in the absence of accused evidence of the witnesses cannot be recorded. In the very judgment itself in **Para 39 Hon'ble Apex Court** has held that*

"the provisions of law and the essence of the case laws as discussed above, give a clear impression that in the matter of a criminal trial against any accused, the distinctiveness of evidence is paramount in light of accused's right to fair trial, which encompasses to important cases along with others, i.e.,

Firstly, the recording of the evidence in the presence of accused or his pleader and secondly, the right of accused to cross-examine the witness.

Considering the above ratio held by the Honorable Apex Court, in this Case in hand this court rightly allowed the absent petition and in the presence of the learned counsel for



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the petitioner/accused alone memo was filed and recorded and the learned counsel for the petitioner/accused had not availed and utilized his opportunities by way of filing 145(2) of NI Act to have a cross examination of the PW1, based on the sworn proof affidavit on the day itself. Therefore, this court since the counsel for the respondent/complainant closed their evidence complainant side evidence was closed and according to procedure case was posted to 06.06.2023 for examination of the petitioner/accused of u/s.313(1) (b) of Cr.P.C. he answered for the same and claimed for his side evidence, thus case was adjourned to 12.06.2023 and 16.06.2023. On 16.06.2023, petitioner/accused filed petition u/s.311 of Cr.P.C. to have a cross examination of PW1 and the same was allowed on the day itself since the respondent/complainant magnanimously endorsed no objection. Subsequently, filed this petition invoking section 273 of Cr.P.C.

Petitioner/accused without challenging the order passed by this Court in accordance with law, by passing the same filed this petition with a strange prayer to set aside the order passed by this Court on 30.05.2023. Once this Court passed said order cannot be challenged before this Court without any specific provisions to do so. As such once this



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Court passed order same cannot be revisited since this court become functus officio. Learned counsel for the respondent/complainant in the petition itself raised serious objection in entertaining this petition. The submissions made by the learned counsel for the respondent/complainant has some force and this court accepts the same and the reasons stated by the learned counsel for the accused cannot sustained in any way. This court followed the procedure and given fair opportunities to the petitioner/accused. However, said opportunities had not been availed by the petitioner/accused".

The observations of the learned trial court judge cannot be found fault with.

5. It is also to be pointed out that the petitioner did not prefer any revision against the recording of the memo filed by the complainant. In the circumstances, I do not see any reason to interfere with the findings recorded by the trial Court. It appears that the present revision petitioner/accused is adopting delaying tactics and hence, the trial Court is directed to proceed further with the case and conclude the entire



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proceedings within a period of one month from the date of receipt of a copy of this order. No costs. Consequently, connected Criminal Miscellaneous petitions are closed.

12.07.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



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R. HEMALATHA, J.
mtl

To

1.The Metropolitan Magistrate,
Fast Track Court -I at Allikulam, Egmore

2. The Section Officer,
Criminal Section, High Court,
Madras.

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