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CrI.O.P.No.24270 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.11.2023

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

CrI.O.P.No.24270 of 2023

and

CrI.M.P.No.16895 of 2023

N.Gomathi

... Petitioner

-VS-

M.Elango

...Respondent

PRAYER : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records culminating in CrI.M.P.No.4676 of 2023 in S.T.C.No.582 of 2019 on the file of the learned Judicial Magistrate, Fast Track Court No.I, Erode order dated 02.08.2023, set aside the same.

For Petitioner

: Mr.S.Bharanidharan

ORDER

The petition is filed by the accused being aggrieved by the order passed by the trial Court eschewing the proof affidavit filed in lieu of chief examination on behalf of the complainant as a power agent. The reason for eschewing is that the said witness has left the Company and therefore, the Company has authorized a different person to pursue the complaint.



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2. The grievance of the petitioner herein is that the statements of the Power of Attorney as found in the proof affidavit has to be taken into consideration as previous statement of the witnesses for the purpose of cross examination. The said submission cannot be countenanced against the proof affidavit filed in lieu of chief examination, did not proceed further and the witness was not cross examined by the petitioner herein who is the accused. Therefore, the trial Court has rightly eschewed the proof affidavit filed in lieu of chief examination on behalf of the erstwhile Power of Attorney.

3. The testimony of the person who is dead or not heard or unable to be secured will have some evidentiary value, only if the person who has given the testimony is cross examined by the adversary. In this case, for reasons not known, the Power of Attorney not been cross examined by the petitioner herein, hence, whatever stated in his proof affidavit in lieu of chief examination has to be eschewed and ignored. But this principle will not apply to the sworn statement given by the Power of Attorney while filing the complaint before the learned Judicial Magistrate, Fast Track Court No.1, Erode who took cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881, which is only a previous statement which can be subjected to contradiction through the same person who has made the statements or from other witnesses.



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4. With this observations, this Criminal Original Petition is disposed of.

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Connected Miscellaneous Petition is closed.

16.11.2023

Index : Yes/No

Neutral Citation : Yes/No

rkp

To

The Judicial Magistrate,
Fast Track Court No.I, Erode.



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Dr.G.JAYACHANDRAN, J.

rkp

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