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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P No.24419 of 2023
and CRL.M.P No.16975 of 2023

Mrs.Gandhimthi

...Petitioner

Vs.

Mr.M.Thilagar

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order dated 09.10.2023 made in Crl.M.P.No.38018 of 2023 in C.C.No.8567 of 2019 passed by the learned Metropolitan Magistrate, Fast Track Court-II, Allikulam, Egmore, Chennai and to allow the above Criminal Original Petition.

For Petitioner : Mr.V.Gopinath
Senior Counsel for
Mr.N.Arun Kumar

For Respondent : Mr.P.Neethi Kumar

ORDER

This criminal original petition has been filed challenging the order passed by the Court below in Crl.M.P.No.38018 of 2023 dated 09.10.2023, dismissing



the application filed by the petitioner under Section 254(2) of Cr.P.C., for examining certain witnesses as defence witnesses.

2. Heard Mr.V.Gopinath, learned Senior Counsel appearing on behalf of the petitioner and Mr.P.Neethi Kumar, learned counsel appearing on behalf of the respondent.

3. The petitioner is facing trial before the Court below for offence under Section 138 of the Negotiable Instruments Act. The case was at the stage of examination of defence witnesses. The petitioner filed an application under Section 254(2) of Cr.P.C., for examining five witnesses. The petitioner had assigned reasons as to why he wanted to examine those five witnesses. The Court below was not inclined to entertain the application and it was dismissed by an order dated 09.10.2023. Aggrieved by the same, the present criminal original petition has been filed before this Court.

4. The first two witnesses who are sought to be examined on the side of the defence are the bank officials. The third witness is the father of the accused whom the accused wants to examine on the ground that the amount was paid and receipt was also given. The fourth and fifth witnesses are sought to be examined on the ground that the cheques were misused.



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5. In the considered view of this Court, the petitioner has to necessarily rebut the legal presumption under Section 139 of the Negotiable Instruments Act. Therefore, an opportunity must be given to the petitioner. This is more so, since the present case involves a huge amount.

6. In the light of the above discussion, the order passed by the Court below in CrI.M.P.No.38018 of 2023 dated 09.10.2023, is hereby set aside and there shall be a direction to the Court below to proceed further with the examination of the defence witnesses and the proceedings in C.C.No.8567 of 2019 shall be completed, within a period of three months from the date of receipt of copy of this order.

7. In the result, this criminal original petition stands allowed with the above direction. Consequently, connected miscellaneous petition is closed.

24.01.2024

Index: Yes/No
Speaking order/Non-speaking Order
Neutral Citation: Yes/No
SSR



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N.ANAND VENKATESH, J

ssr

To

- 1.The Metropolitan Magistrate,
Fast Track Court-II, Allikulam, Egmore, Chennai
- 2.The Public Prosecutor,
High Court, Madras.

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