

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case Nos.1322 and 1325 of 2015

COMMON ORDER:-

These two revisions can be disposed of by a common order since they arise out of the orders passed by the learned I-Additional Metropolitan Sessions Judge, Hyderabad, in petitions filed during the pendency of Criminal Appeal No.291 of 2014.

2. The facts leading to the present revisions may briefly be noticed. The revision petitioner is the appellant in Criminal Appeal No.291 of 2014 on the file of the I-Additional Metropolitan Sessions Judge, Hyderabad, and he is the respondent/accused in C.C.No.216 of 2012 on the file of the Special Magistrate-V, Hyderabad. Originally, the complainant filed the complaint alleging the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act') on the file of the X-Additional Chief Metropolitan Magistrate, and it was registered as C.C.No.351 of 2012. Subsequently, the case was transferred to the Special Magistrate-V, Hyderabad, where it was re-numbered as C.C.No.216 of 2012. The claim of the complainant was that in view of certain transactions, the petitioner/accused issued a post-dated cheque for Rs.5,00,000/- and when presented the cheque, the same was returned with an endorsement *payment stopped by the drawer*. The complainant issued a legal notice but the accused failed to take the same and as such it was returned as 'not claimed'. Hence the complaint.

3. During the course of trial, the complainant examined himself as PW.1 and produced Exs.P.1 to P.22. Thereafter, the petitioner/accused was examined under Section 313 Cr.P.C., and he denied the evidence on record contending that a false case has been filed and he stated that he has defence evidence to be produced. After taking 'seven' adjournments, on 06-11-2013, it was represented on behalf of the petitioner/accused that no evidence is proposed. Detailed arguments were advanced on behalf of the petitioner/accused and the respondent/complainant. Taking into consideration the material on record, by Judgment dated 12-03-2014 the learned Special Magistrate-V at Hyderabad, found the petitioner/accused

guilty of the offence punishable under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.10,000/-. From out of the said fine amount, a sum of Rs.9,000/- was ordered to be paid to the complainant.

4. Aggrieved by the said conviction and sentence, the petitioner/accused preferred Criminal Appeal No.291 of 2014 on the file of the I-Additional Metropolitan Sessions Judge, Hyderabad.

5. Pending disposal of the appeal, the petitioner/accused filed Crl.M.P.No.2279 of 2014 under Section 391 Cr.P.C., seeking to receive additional evidence which comprised of the certified copy of the proceedings before the Upa Lokayukta, Hyderabad, dated 31-01-2013. He contended that the cheques and the memorandum of understanding which was marked as Ex.P.10 were forcibly executed by the petitioner/accused in Tukaramgate P.S., and therefore he had issued instructions to the banker not to honour the cheques. This happened on 04-12-2011. Thereafter, a complaint was made by him against the police officials working in Tukaramgate P.S., and the enquiry was conducted by the D.C.P. A complaint was also filed before the Upa Lokayukta.

6. The said Crl.M.P.No.2279 of 2014 was dismissed by the learned appellate Court on 02-12-2014 observing that the petitioner/accused is seeking a *de novo* trial which is not permissible.

7. Aggrieved by the said dismissal, the petitioner/accused filed Criminal Petition No.15586 of 2014 on the file of the High Court. By Order, dated 23-03-2015, the High Court dismissed the petition filed by the petitioner/accused.

8. The petitioner/accused filed Special Leave to Appeal (Criminal) No.3580 of 2015 on the file of the Supreme Court of India against the order of this Court in Criminal Petition No.15586 of 2014, dated 23-03-2015. The Hon'ble Supreme Court on 07-05-2015 dismissed the Special Leave Petition observing as under:-

“We have heard learned Counsel for the parties.

We see no reason to interfere with the order passed by the High Court.

The special leave petition is, accordingly, dismissed. **The**

petitioner shall however be free to raise all such contentions on facts and law as are legally open to him at the appellate stage. (emphasis supplied)”

9. Thereafter, the petitioner/accused filed two Crl.M.Ps. before the appellate Court, one petition is filed under Section 91 Cr.P.C., seeking to summon DCP, North Zone, to produce the complaints of the petitioner, dated 03-01-2012 and another petition bearing Crl.M.P.No.661 of 2015 is filed under Section 386 (b)(i) Cr.P.C., praying the Court to pass orders for re-trial in C.C.No.216 of 2012.

10. By Orders, dated 24-06-2015, the learned appellate Court dismissed both the petitions. Crl.R.C.No.1322 of 2015 is filed against the orders dismissing the petition under Section 91 Cr.P.C., whereas Crl.R.C.No.1325 of 2015 is filed against the dismissal of the petition filed under Section 386 (b)(i) Cr.P.C.

11. The contention of the learned Counsel appearing for the petitioner is that it is no doubt true that the previous attempt by the petitioner/accused for similar relief was made and the same has been negated by the trial Court, the High Court and also the Supreme Court. It is, however, submitted that while dismissing the Special Leave Petition filed by the petitioner/accused before the Supreme Court, the Hon'ble Supreme Court was pleased to give liberty to the petitioner/accused to raise all such contentions on facts and law as are legally open to him at the appellate stage. Therefore, the petitioner/accused filed the two petitions in hand before the appellate Court to summon the DCP, North Zone, to produce the complaints of the petitioner/accused made against the SHO, Tukaramgate P.S., and the proceedings of the Commissioner of Police, Hyderabad, with regard to the disciplinary action taken against the police officials of Tukaramgate P.S. Summons were also sought for production of the report submitted by the Joint Commissioner of Police, Special Branch, Hyderabad, to the Commissioner of Police, Hyderabad. Similarly, the report of the Commissioner of Police submitted to the Hon'ble Upa Lokayukta and directing the S.H.O., Tukaramgate P.S., to produce the First Information Report in Cr.No.120 of 2011.

12. In the other petition that was filed the petitioner/accused sought for the relief of direction for re-trial of the case by a Court of competent jurisdiction. Learned Counsel submits that the learned appellate Court erred in dismissing both the petitions and hence the revisions.

13. Learned Counsel appearing for the respondent/complainant, on the other hand, submits that it is a clear case of abuse of process of law being resorted to by the petitioner/accused. Learned Counsel submits that the petitioner/accused has filed the petitions in hand by interpreting the direction of the Hon'ble Supreme Court as if he has been given the liberty of filing the petitions for the self-same reliefs which were previously negated by the appellate Court, the High Court and the Apex Court. Learned Counsel submits that what all the Hon'ble Supreme Court stated is that the petitioner/accused is at liberty to avail such of the remedies that are legally open to him at the appellate stage. It is further submitted that when a petition to summon the documents and to produce further evidence was rejected by the appellate Court initially, the petitioner/accused preferred Criminal Petition No.15586 of 2014 before the High Court and by Judgment, dated 23-03-2015, the petition was dismissed categorically holding that the grounds taken for producing additional evidence in the appellate Court are based upon a lame excuse that his Counsel has not properly conducted the case during the course of trial. It is further contended that having been unsuccessful in all the three Courts viz., the appellate Court, the High Court and the Hon'ble Supreme Court, the petitioner/accused has once again filed similar petitions and therefore it is a fit case where the petitions are liable to be dismissed with exemplary costs.

14. C.C.No.216 of 2012 on the file of the Special Magistrate-V, Hyderabad, (original C.C.No.351 of 2012 on the file of the X-Additional Chief Metropolitan Magistrate, Secunderabad) was filed under Section 138 of the Act based on the dishonour of cheque said to have been issued by the petitioner/accused to the complainant. During the course of trial, the petitioner/accused did not take the stand that the said cheque and the memorandum of understanding in pursuance to which the cheque

is issued were obtained by the police officials under the influence of the complainant holding out the threats and coercion. Learned Magistrate has found the contention of the petitioner/accused untenable and rejecting the same, held the accused guilty of the offence punishable under Section 138 of the Act and sentenced him as stated supra. Aggrieved by the said Judgment, Criminal Appeal No.291 of 2014 is filed on the file of the I-Additional Metropolitan Sessions Judge, Hyderabad. In the *grounds of appeal*, the petitioner/accused has not taken the ground that the memorandum of understanding and the cheque in question were the outcome of any force, coercion or threat by the police officials. Only during the pendency of the appeal, the petitions are filed to place on record the documents pertaining to the alleged acts of the police officials in obtaining the memorandum of understanding and the cheque by contending that the petitioner/accused was not given proper legal advice at the time when the matter was pending in the trial Court. This contention of the petitioner/accused was disbelieved by the appellate Court and by the High Court in Criminal Petition No.15586 of 2014. The High Court dismissed the petition observing as under:-

“10. So, when the defence as a whole is considered, it went altogether on a different line. Now, the accused come up with a set of documents stating that they will establish that Exs.P.10 and P.11 were obtained by threat and coercion. There is no cogent and convincing reason why the proceedings before Upa Lok Ayukta and the complaint given to the higher police officials were not filed during trial. It must be noted that Hon'ble Upa Lok Ayukta passed in his order on 31-01-2013 i.e., much prior to the Judgment in C.C.No.216 of 2012 which was dated 12-03-2014. The lame excuse of the petitioner is that his Counsel has not properly conducted the case and filed the documents at the relevant point of time. I am afraid, this cannot be a ground to allow the additional evidence petition. The ratio of citations filed by either side relating to Section 391 Cr.P.C., is to the effect that the power under Section 391 Cr.P.C., has to be exercised with caution and circumspection to meet the ends of justice but, such power shall not be used to fill up lacuna in the case of either party. In the instant case, allowing the documents on behalf of the accused in my view would amount nothing but filling up the lacuna. Since the power under Section 391 Cr.P.C., shall be

used with circumspection but not in neglect, the prayer of the petitioner cannot be conceded.”

15. This order of the High Court was challenged by filing a Special Leave Petition before the Supreme Court and a three Judge Bench of the Hon'ble Supreme Court, by order referred to above, dismissed the Special Leave Petition holding that they do not see any reason to interfere with the order passed by the High Court.

16. In view of the above, it is not open to the petitioner/accused to once again file the petitions in the appellate Court seeking summons to the police officials to produce the proceedings with reference to the alleged forcible acts of the respondent/complainant in obtaining the memorandum of understanding and the cheque with the help of the police officials.

17. The contents of the two Miscellaneous Petitions filed in the appellate Court viz., the one which became final by the Judgment of the Supreme Court and another which is now filed are one and the same. Therefore, same grounds and contentions cannot be urged again and again, more particularly, when the appellate Court, the High Court and the Supreme Court rejected the same.

18. Learned Counsel submits that he has filed the present petitions in pursuance to the liberty given to him by the Supreme Court to raise all such contentions on facts and law as are legally open to him at the appellate stage. This observation of the Supreme Court, in my opinion, does not give any freedom to the petitioner/accused to reiterate the very same prayer and the same contentions which were rejected. What is all that the Hon'ble Supreme Court said is that the petitioner/accused is at liberty to raise all such contentions on facts and law as are legally open to him at the appellate stage. Therefore, only such of the steps, which are legally permissible at the appellate stage, can be taken by the petitioner/accused but not the one which has been rejected and became final.

19. It may also be placed on record that the petition directing issuance of summons to the Commissioner of Police etc., to produce the record

pertaining to the criminal investigation is filed under Section 91 Cr.P.C., which cannot be availed of by an appellant at the appellate stage. The petitioner/accused/appellant, at the stage of appeal, is entitled to seek reliefs provided for in Chapter XXIX of Cr.P.C. (Sections 372 to 394) but not Section 91 of Cr.P.C., which is in Chapter VII of Cr.P.C. This aspect is also made clear by the Supreme Court while it gave the liberty to the petitioner/accused to raise all such contentions on facts and law as are legally open to him at the appellate stage.

20. As already noticed, the main stay of the contention of the petitioner/accused is that he was not properly guided legally at the time when the matter was pending in the trial Court and that he should not be made to suffer for the improper legal advice given to him by the Advocate on record. This contention needs to be stated only for the sake of rejection. Already, this Court in Criminal Petition No.15586 of 2014 termed the said contention of the petitioner/accused as a lame excuse of the petitioner that his Counsel has not properly conducted the case and filed the documents at the relevant point of time. In addition to the above, from the record, it is manifest that the petitioner/accused has availed the legal remedies at every stage of the dispute, both at the trial Court level, the appellate Court and the High Court. For instance, immediately after the present complaint under Section 138 of the Act was taken on file and numbered as C.C.No.351 of 2012 on the file of the X-Additional Chief Metropolitan Magistrate, the petitioner/accused has filed Criminal Petition No.3533 of 2012 under Section 482 Cr.P.C., for quashing the said Calendar Case at the very inception and by Judgment, dated 11-04-2012, the High Court dismissed the said petition. It is pertinent to place on record that even before the trial in the case began, the petitioner/accused has sought for its quashing and the grounds that are urged at that time are not the one that are now sought to be taken at the appellate stage. In the earliest petition filed to quash the Calendar Case, the contention of the petitioner/accused was that the cheque in question was not issued in relation to discharge of any legally enforceable liability and that conditions No.2 and 3 of the memorandum of understanding

have not been honoured and therefore continuation of the impugned proceedings is nothing but abuse of process of Court. At that time, the petitioner/accused did not say that the said memorandum of understanding and the cheque were the outcome of any fraud, coercion, threat etc., at the hands of the police.

21. It is also noticed from the record that the respondent/complainant herein has filed C.C.No.1100 of 2011 on the file of the X-Additional Chief Metropolitan Magistrate, Secunderabad, alleging offences punishable under Sections 418, 420, 406 and 120-B of IPC., against the petitioner/accused herein. The petitioner/accused has filed Criminal Petition No.354 of 2012 to quash the said Calendar Case. Subsequently, however, the petitioner/accused, who was represented by the Counsel, sought permission of the Court to withdraw the Criminal Petition with a liberty to approach the trial Court invoking the provisions of Section 239 Cr.P.C., and to file discharge petition. The Calendar Case alleging offences under Indian Penal Code was filed against the petitioner/accused almost simultaneously with the petition under Section 138 of the N.I.Act. What could be culled out from the above is that immediately on a criminal case being taken cognizance of, the petitioner/accused has approached the High Court under Section 482 Cr.P.C., for quashing the criminal cases, both under the provisions of the Indian Penal Code and also Negotiable Instruments Act. In view of the above, it is difficult to accept the contention of the petitioner/accused that he was not having effective legal advice at the time when the complaint under Section 138 of the Act was pending in the trial Court.

22. It may also be stated that if the additional evidence is sought to be summoned at the appellate stage, some reasonable grounds should exist for allowing such a request and justifiable reasons should exist for non-production of the relevant material in the trial Court where both the parties are expected to place the entire oral and documentary evidence on record in their possession in support of their contentions. In the instant case, the petitioner/accused submits that he was called to Tukaramgate P.S., on 03-12-2011 on the basis of a complaint given by the 1st

respondent/complainant and the petitioner/accused was forced to sign on blank cheque after detaining him for whole day in the police station. It is also alleged that a compromise memo is also drafted in the police station as if the petitioner agreed to purchase the property for Rs.35,00,000/- and he paid advance of Rs.5,00,000/-. Thereafter, it is his contention that on being released from the police station, on 07-12-2011 itself the petitioner/accused gave a letter to the bankers to stop payment in respect of the cheque for Rs.5,00,000/-, which was forcibly taken by the respondent/complainant in police station by threat and coercion. He also submits that even on 03-01-2012 itself he gave a complaint to the Deputy Commissioner of Police and on the said complaint, the S.H.O., Tukaramgate P.S., was suspended on 22-01-2012. Subsequently, he also filed a complaint before Lok Ayukta regarding interference of police in civil disputes and harassment meted out to the petitioner in the police station. From the above contentions of the petitioner/accused, it is manifest that all these developments took place before January, 2012 itself. On cheque being dishonoured, the respondent/complainant issued the statutory notice on 20-12-2011. The complaint under Section 138 of the Act was filed before the Magistrate in January, 2012. The said case was pending on the file of the trial Court for a period of nearly 26 months which came to be disposed of on 12-03-2014. The Upa Lok Ayukta also has closed the complaint of the petitioner/accused on 31-01-2013. On behalf of the petitioner/accused, the *de facto* complainant/PW.1 was cross-examined in the trial Court on 10-07-2013. Even though, all the material developments said to have taken place much prior to the cross-examination of PW.1 by the accused, still the petitioner/accused has not thought it proper to place the entire material on record even though all the said developments were well within his knowledge. The petitioner/accused is a businessman, aged about 65 years. It is difficult nay impossible to believe that such a person would have been ignorant of placing the material on record, more particularly, in a case which emanated out of the alleged wrongful act of omission and commission alleged to have been resorted to by the complainant and the police

officers of Tukaramgate P.S., and the said aspects, according to the petitioner/accused, have a direct bearing on the case trial of which was in progress.

23. The above sequence of events during the proceedings of the present case under Section 138 of the Act clearly show that the defence that is now being taken at the appellate stage is clearly afterthought and was not in contemplation when the trial in the Calendar Case was pending by inappropriately putting the blame on the Advocate for inept handling of the case.

24. In view of the foregoing discussion and upon considering the entire material on record, I see no merits in the present petitions, which lack *bona fides* on the part of the petitioner/accused in availing the legal remedies available under the provisions of the Code of Criminal Procedure at the appellate stage and consequently the Criminal revision cases are liable to be dismissed.

25. In the result, the Criminal Revision Cases are dismissed. Miscellaneous petitions, if any, pending in these revisions shall stand closed.

M.S.K.Jaiswal, J

7th September, 2015

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