

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.15586 of 2014

ORDER:

In this petition filed under Sec.482 Cr.P.C, the petitioner/accused prays for a direction to the I Additional Metropolitan Sessions Judge, Hyderabad, to accept the certified copies of Proceeding in Dis.No.69/2012/B2/2681/2013, dated 13.02.2013 and the Order in complaint No.69/2012/B2 of Hon'ble Upa Lok Ayukta of Andhra Pradesh, Hyderabad, dated 31.01.2013 and mark the same as exhibits on behalf of petitioner/accused in Criminal Appeal No.291 of 2014.

2) The matrix of the case is thus:

The respondent/complainant filed C.C.No.69 of 2012 on the file of Special Magistrate-V at Hyderabad under Section 138 of Negotiable Instrument Act against the petitioner/accused with the allegations that he entered into agreement of sale with four persons namely Smt R. Rani, N.R.Nareder, N.R.Ravinder and S. Dhanalaxmi in respect of an open plot but at the time of registration, he came to know that those four persons in collusion with the petitioner/accused, already sold away the said plot in favour of the accused and executed a registered sale deed in his favour. Hence, the complainant demanded his vendors and accused to pay back his amount and when they refused, he gave report in Cr.No.120 of 2011 against them for the offences under Sections 418, 420, 406 and 120-B IPC and Section 82 of

Registration Act and the police filed Charge sheet and the same was registered as C.C.No.1100 of 2011 before X Chief Metropolitan Magistrate. Thereupon, all the above said persons admitted their guilt and the present accused agreed to give Rs.35,00,000/- to the complainant towards full and final settlement and executed Ex.P.10 Memorandum of Understanding-Cum-Deed of Compromise and issued a post-dated cheque for Rs.5,00,000/- as a part payment and he agreed to pay the balance amount in future. When the complainant presented the above said cheque, it was bounced back with the endorsement “ payment stopped by the drawer”. After giving Notice, the complainant filed C.C.No.216 of 2012. After full fledged trial, the learned Special Magistrate-V convicted and sentenced the accused.

3. Aggrieved, the accused filed Criminal Appeal No.219 of 2014 now pending on the file of I Additional Metropolitan Sessions Judge, Hyderabad. In the said appeal, he filed Crl.M.P.No.2279 of 2014 under Section 391 Cr.P.C., seeking to receive certain documents mentioned supra. His case is that the complainant managed the police of Thukaramgate Police Station and brought the petitioner/accused to the police station and forcibly made him execute the document covered by Ex.P.10 and obtained Ex.P.11-Cheque from him and in those circumstances, the accused executed Ex.P.10 under undue influence and coercion and there was no willful consent. Therefore, on the next day i.e., on 04.12.2011, he issued

instructions to his Bank Manager to stop payment by narrating the facts. Further, he also gave complaint to higher police officials against Sri Santosh Kiran, Inspector of Police and Appal Naidu, Sub Inspector of Police of Thukaramgate Police Station and the then D.C.P North Zone initiated enquiry against those police personnel vide D.O.No.509, dated 22.01.2012 of C.P., Hyderabad. Added to it, the accused also filed a complaint No.69/2012/B2/2681/2013, dated 13.02.2013, against the police officials of Thukaramgate Police Station before Upa Lok Ayukta and after enquiry, the Hon'ble Upa Lok Ayukta closed the complaint observing the connected C.C.No.1100 of 2011 was pending before XI Additional Chief Metropolitan Magistrate Court, Secunderabad and if any order was passed by him, it would amount to interference with the jurisdiction of the Criminal Court.

4) The submission of learned counsel for accused is that the documents relating to the proceedings before Upa Lok Ayukta and the complaint filed against the police officials etc., are very much important to prove his defence to the effect that he did not enter into Ex.P.10 Memorandum of Understanding-cum-Deed of Compromise with consent, but he was forced to execute the said document and further, he did not give Ex.P.11 Cheque to discharge any legally enforceable debt, but it was obtained forcibly by the complainant with the connivance of Police. His grievance is that during trial, the Advocate appeared on his behalf failed to present the above said documents into Court and as a result the case was ended in conviction and therefore, in

appeal, an opportunity may be given to him and the documents may be permitted to be marked.

5) In the impugned Order in Criminal Petition No.2279 of 2014, the learned I Additional Metropolitan Sessions Judge at Hyderabad, observed that the request of the petitioner/accused is in the nature of seeking for *de novo* trial, which is not permissible, and accordingly, dismissed the petition.

Hence, the instant petition.

6) Heard.

7) Learned counsel for petitioner argued that the documents sought to be marked are nothing but the certified copy of Proceedings before Upa Lok Ayukta and hence, there can be no objection and the said document will help the Court to decide the appeal in a right perspective since it will enable the Court to know that Ex.P.10 was executed by the petitioner by threat and coercion and Ex.P.11 was not issued for discharge of any legally enforceable debt. With regard to power of the appellate Court to admit the additional evidence under Section 391 Cr.P.C., he relied upon a decision reported in **Rambhau and another v. State of Maharashtra**^[1].

8. In oppugnation, the learned counsel for complainant submitted, all through the accused never pleaded that Ex.P.10 was got executed by force of the police and Ex.P.11 was obtained under the pressure and it is only during appeal, he has

come up altogether with a new case and Section 391 Cr.P.C., will not permit a party to introduce a new case and fill up the lacuna and that is the reason, the Appellant Court rightly dismissed the petition holding as if the petitioner/accused seeks for a *de novo* trial, which is impermissible. As the impugned Order suffers no vice of perversity or illegality, the Petition may be dismissed. He too relied upon the following decisions reported in **Ashok Tshering Bhutia v. State of Sikkim**^[2] and **Dasari Ragha Krishna v. State of A.P., rep. by the P.P, High Court of A.P., Hyderabad and another**^[3]. He further argued that in the instance petition, the accused has not specifically sought for setting aside the impugned order of the Appellate Court and hence, the present Petition is not maintainable.

8) In the light of the above rival arguments, the point for determination is”

“ whether there are merits in this Petition to allow”.

9) **POINT:**

On a perusal of Judgment in C.C.No.216 of 2012 and the cross examination of PW.1 (the complainant-M. Mohan Rao), I find considerable force in the submission of counsel for respondent/complainant. The line of defence taken by the accused in the above C.C., as can be culled out from the tenor of cross examination of PW.1 and the observation in the judgment is altogether different from the defence sought to be projected

through the intended documents. Before trial Court, the line of defence appears to be different in the sense that in the cross examination of PW.1, there is no specific suggestion to the effect that Ex.P.10 was obtained from him by PW.1 with the connivance of police by putting the accused in threat and coercion. Similarly, there is no specific suggestion to the effect that Ex.P.11-Cheque was also obtained by threat and coercion. Of course, a stray suggestion was given to the effect that Circle Inspector of Tukaramgate Police Station was suspended on the ground that Ex.P.10 got executed under his threat, which was denied by PW.1. Except the said suggestion in his defence, he has not attacked the credibility of Exs.P.10 and 11. In para-4 (b) of the Judgment, the trial Court referred his defence as follows:

“On the other hand, learned counsel for accused in opposition argued that as per terms and conditions of Ex.P.10 dated 03.12.2011 original memorandum of understanding-cum-Deed of Compromise, there are pre-requisites to create legally enforceable liability. Those pre-requisites have not been complied by the complainant. As such, issue of cheque under Ex.P.11 is not for existing liability legally enforceable under law. The facts crept in cross examination of PW.1-M. Mohan Rao substantially supports defence of the accused. As such, the first element of the offence punishable under Section 138 of N.I.Act has not been proved by the complainant. Therefore, this case must fall and accused is entitled for acquittal.

10) So, when the defence as 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 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 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 can not 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.

11) In the result, this Criminal Petition is accordingly dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 23.03.2015

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[\[1\]](#) (2001) 4 SCC 759

[\[2\]](#) (2011) 4 SCC 402

[\[3\]](#) 2010 (2) ALT (Cri) 250 (AP)