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HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO
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CRIMINAL PETITION NO. 945 OF 2015

ORDER:

Heard learned counsel for the petitioner and the learned Public Prosecutor representing the State of Telangana for the respondent.

2. This application under Section 482 Cr.P.C is filed against the order dated 21.1.2015 in Criminal M.P.No. 183 of 2010 in Criminal Appeal No. 439 of 2009 in C.C.No. 126 of 1996 on the file of IV Additional Metropolitan Sessions Judge, Hyderabad.

3. Petitioner herein is appellant No.3 in the above appeal and accused No. 6 in the trial court.

4. He filed this application under Section 391 Cr.P.C to summon the original of an Enquiry Report dt. 14.6.2007 and another Enquiry Report dt. 26.3.2009, wherein the petitioner was found not guilty by his employer APTRANSCO. He contended that the charges that were levelled against the petitioner and in the enquiry are one and the same and since the Enquiry Officer found the petitioner not guilty, it could operate as a bar to convict him. He therefore wanted the court to call for these enquiry reports along with evidence rendered therein and receive them as additional evidence. The court below posted this application to be heard along with the appeal

on the ground that this application should be heard only along with the appeal and that at the time of hearing of the appeal, if it is found that receiving of additional evidence is necessary, then it would take steps for calling for such additional evidence and then dispose of the appeal. It held that the petitioner, without making submissions in the main appeal, cannot make the Appellate Court to appreciate the need for additional material.

5. Challenging the same, this Criminal Petition is filed.

6. It is contended by the counsel for the petitioner that the stand taken by the Court below is not correct and that no decision has been quoted by the court below in support of its view. He contended that the application for additional evidence in the lower appellate court need not be heard along with the appeal unlike in an appeal on the civil side under Section 96 of C.P.C.

7. The learned Public Prosecutor has also not been able to place any decision in support of the view taken by the court below.

8. The intention of the Legislature in enacting Section 391 is to empower the Appellate Court to see that justice is done between the prosecutor and the person prosecuted, and if the Appellate Court finds that certain evidence is necessary in order to enable it to give a correct finding, it would be justified in taking action under Section 391. The primary object of Section 391 is the prevention of guilty man's escape through some careless

or ignorant proceedings before a Court or vindication of an innocent person wrongfully accused. There is no restriction in the wording of Section 391, either as to the nature of the evidence, or that it is to be taken for the prosecution only or that the provisions of the Section are only to be invoked when formal proof for the prosecution is necessary. If the Appellate Court thinks that it is necessary in the interest of justice to take additional evidence it shall do so. The matter is one of the discretion of the Appellate Court. 9. In the absence of any statutory prohibition or a precedent in support of the view taken by the appellate Court that an application for additional evidence shall be considered only at the time of hearing of appeal, I am of the opinion that principle followed in civil matters that the application for additional evidence shall be considered only with the appeal cannot be imported here. Therefore, the impugned order is set aside and the court below is directed to consider this application before commencing of arguments in the main appeal and decide the same in accordance with law.

10. Accordingly, the Criminal Petition is allowed.

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

**JUSTICE M.S.RAMACHANDRA
RAO**

Date: 20.02.2015

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