

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Criminal Revision Case Nos.1835 and 1836 of 2013

Between :

K.Rawindra Reddy Petitioner

And

The State of A.P. and two others Respondents

JUDGMENT PRONOUNCED ON : 06-11-2015

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

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1. Whether Reporters of Local Newspapers may :

Be allowed to see the Judgments ? :

2. Whether the copies of judgment may be marked :

To Law Reporters/Journals :

3. Whether Their Ladyship/Lordship wish to :

See fair Copy of the Judgment ? :

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

+Crl.R.C.Nos.1835 and 1836 of 2013

% 06-11-2015

K.Rawindra Reddy .. Petitioner

Vs.

\$ The State of A.P.,

Rep.by Public Prosecutor,

High Court of A.P., Hyderabad

and another. ... Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri P.Vishnuvardhan Reddy

^ Counsel for respondent No.1: Public Prosecutor

Counsel for respondent Nos.2 and 3: Sri D.V.Reddy &
Sri N.Harinath

? CASES REFERRED :

1. (2013) 5 SCC, 741

2. AIR 1991 S.C., 1346

3. (2006) 3 SCC 374

4. (1967) 3 SCR 415

5 1999 (6) SCC 110

6 (2009) 2 SCC (Cri) 455

7 AIR 1989 S.C., 1785

8 1992 (1) An.W.R.535

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

Criminal Revision Case Nos.1835 and 1836 of 2013

COMMON ORDER:-

These two revisions arise out of the orders of the learned XIX-Additional Chief Metropolitan Magistrate, Hyderabad, dated 19-08-2013, made in Crl.M.P.Nos.1441 and 1442 of 2013 in C.C.No.815 of 2012.

2. Crl.M.P.No.1441 of 2013 was filed under Section 311 Cr.P.C., to recall the complainant/PW.1 whereas Crl.M.P.No.1442 of 2013 was filed under Section 91(1)(2) of Cr.P.C., seeking to summon the documents which were marked in another C.C.No.814 of 2012 and to mark the same in the present Calendar Case viz., C.C.No.815 of 2012. Both the petitions were dismissed.

3. The petitioner is the complainant and respondents No.2 and 3 are shown as A.1 and A.2 in C.C.No.815 of 2012. The very same complainant filed another Calendar Case bearing C.C.No.814 of 2012 against the same accused. Both the Calendar Cases are on the file of the learned XIX-Additional Chief Metropolitan Magistrate, Hyderabad. These two cases are filed alleging offence punishable under Section 138 of the Negotiable Instruments Act, and trial in both the Calendar Cases have been concluded and at the stage of arguments, these two petitions are filed in the present Calendar Case and similar petitions are also filed in C.C.No.814 of 2012. The contention of the complainant as well as the defence of the respondents/accused in both the Calendar Cases is one and the same.

4. According to the complainant, in between the complainant and the accused, there were certain dealings in procurement of lands and the 2nd respondent/accused Company has appointed the complainant as General Manager of the Company. It is claimed that the complainant arranged several lands with his efforts and got entered into sale agreements after paying sale amounts/advances in terms of the understanding and after procurement of the lands, the 2nd respondent/accused Company gave Rs.1,00,00,000/- (Rupees One Crore only) to the complainant towards his remuneration for the services rendered by him for procuring the lands and incidental expenditure. It is further alleged that the 2nd respondent/accused Company has issued two cheques for

Rs.50,00,000/- (Rupees fifty lakhs only) each drawn on Indian Overseas Bank, Nakkapalle Branch, Visakhapatnam District. One cheque was bearing No.021192, dated 22-12-2011 and another cheque was bearing No.021278, dated 06-01-2012. Both the cheques were presented by the complainant for encashment and both the cheques returned with an endorsement *account blocked*. Thereafter, the complainant issued the statutory legal notices for dishonour of both the cheques on 07-01-2012 which were received by the respondents on 09-01-2012. A.1 gave a reply on 18-01-2012 contending that the complainant has stolen the signed blank cheques bearing Nos.021192 and 021278 and filed the complaints.

5. In respect of cheque bearing No.021278, dated 06-01-2012, the complainant originally filed C.C.No.396 of 2012 on the file of the XIV-Additional Chief Metropolitan Magistrate, Hyderabad.

6. In respect of another cheque bearing No.021192, dated 22-12-2011, the complainant originally filed C.C.No.358 of 2012 on the file of the XIV-Additional Chief Metropolitan Magistrate, Hyderabad.

7. Subsequently, the above two Calendar Cases were transferred to the Court of the XIX-Additional Chief Metropolitan Magistrate, Hyderabad, where they were re-numbered as C.C.Nos.814/2012 and 815/2012 respectively. Since both the Calendar Cases were in between the same parties and the subject matter was identical, apparently, both the cases were being called simultaneously. On 01-03-2012, the sworn statement of the complainant was recorded. Thereafter, the cognizance of the case was taken. The accused were examined under Section 251 Cr.P.C., where the accusations were put to them and they denied the same. Till this stage, viz., recording the sworn statement, taking cognizance and examination of the accused under Section 251 Cr.P.C., everything was in order. In C.C.No.814 of 2012 the following question was put to both the respondents/accused, to which they replied as false:-

“Complainant K.Rawindra Reddy filed a private complaint against you alleging that you A.2 is entered into MOU with M/s.Panet Sez Pvt.Ltd., Mumbai. A.2 appointed the complainant as General Manager Operation for the purpose of procuring the land to comply the terms and conditions of the MOU entered between the A.2 and M/s.Planet Sez Pvt.Limited. After the procurement of lands as required by the accused No.2 Company given Rs.1,00,00,000/- to the complainant towards his

remuneration for the services rendered by him in procuring the land besides the incidental expenditures incurred by him. A.2 have issued two cheques each for Rs.50,00,000/- drawn on Indian Overseas Bank, Nakkalapalle, Visakhapatnam District., dated 22-12-2011 bearing No.021192 and cheque No.021278, dated 06-01-2012, respectively, in favour of the complainant, Hyderabad towards discharge of liability which is legally enforceable and **complainant presented the cheque bearing No.021278, IOB Bank, Nakkapalle branch and the same was dishonoured for the reason "Opening balance insufficient". What do you say?**

8. Similarly, insofar as C.C.No.815 of 2012 is concerned, during the course of examination under Section 251 Cr.P.C., the following question was put to both the accused, which they denied:-

“Complainant K.Rawindra Reddy filed a private complaint against you alleging that you A.2 is entered into MOU with M/s.Panet Sez Pvt.Ltd., Mumbai. A.2 appointed the complainant as General Manager Operation for the purpose of procuring the land to comply the terms and conditions of the MOU entered between the A.2 and M/s.Planet Sez Pvt.Limited. After the procurement of lands as required by the accused No.2 Company given Rs.1,00,00,000/- to the complainant towards his remuneration for the services rendered by him in procuring the land besides the incidental expenditures incurred by him. A.2 have issued two cheques each for Rs.50,00,000/- drawn on Indian Overseas Bank, Nakkalapalle, Visakhapatnam District., dated 22-12-2011 bearing No.021192 and cheque No.021278, dated 06-01-2012, respectively, in favour of the complainant, Hyderabad towards discharge of liability which is legally enforceable and **complainant presented the cheque bearing No.021192, IOB Bank, Nakkapalle branch and the same was dishonoured for the reason "Opening balance insufficient". What do you say?**

9. It is apparent from the above that in both the Calendar Cases, there was specific reference to the two cheques alleged to have been issued by the respondents/accused each for Rs.50,00,000/- on 22-12-2011 and 06-01-2012. However, insofar as the specific accusation was concerned, it was put to the respondents/accused that the cheque which is the subject matter of complaint was issued by the respondents which was dishonoured.

10. Both the Calendar Cases were taken up for trial. Affidavit in lieu of chief-

examination was filed in both the cases. At that stage, according to the complainant, an inadvertent mistake has crept-in. In the chief affidavit, after referring to the transaction and issuance of two cheques, in para 4 of the chief affidavit, instead of referring to the cheque No.021278, dated 06-01-2012, in C.C.No.814 of 2012, reference is made to cheque No.021192, dated 22-12-2011, which, in fact, is the subject matter of another C.C.No.815 of 2012.

11. Similarly, in the affidavit filed in lieu of chief-examination filed in C.C.No.815 of 2012, which was in respect of the cheque bearing No.021192, dated 22-12-2011, reference is made to the cheque bearing No.021278, dated 06-01-2012, which, in fact, is the subject matter of C.C.No.814 of 2012.

12. Consequently, the exhibits were marked in both the Calendar Cases. The Memorandum of Understanding, the Resolution of the accused, the Cheques, Return Memos, Legal Notices, Acknowledgments and Replies were marked in both the cases. Instead of marking the cheque and the consequential documents relevant for C.C.No.814 of 2012, the cheque and the relevant documents of C.C.No.815 of 2012 were marked in C.C.No.814 of 2012.

13. Similarly, in C.C.No.815 of 2012, the cheque and the relevant documents which are in respect of C.C.No.814 of 2012 were marked as exhibits.

14. Learned Counsel appearing for the complainant submitted that this mistake in filing the Chief Affidavit and consequently marking the cheque and its corresponding documents has occasioned in view of the fact that originally the Calendar Cases were filed on the file of the XIV-Additional Chief Metropolitan Magistrate, Hyderabad, and on both the cases being transferred to XIX-Additional Chief Metropolitan Magistrate, Hyderabad, different Calendar Case Numbers were given. At that stage, in the Office of the Advocate, on the docket, wrong numbers were noted, which resulted in filing the cheque and the other documents of one Calendar Case in another Calendar Case. It is submitted that in both the Calendar Cases, the complainant/PW.1 has elaborately been cross-examined and nothing is elicited from him that the cheque that is exhibited in particular Calendar Case is not in respect of that case. As a matter of fact, common cross-examination was conducted in both the Calendar Cases.

15. Learned Counsel appearing for the petitioner further submits that originally another Advocate was on record for the complainant and in view of new Counsel coming on record due to the death of the then Counsel, the present Advocate came on record and this wrong noting of the case numbers on the docket of the Advocates file was not noticed. It is further submitted that only during the course of arguments, the mistake was detected and the two CrI.M.Ps. have been filed, which as stated, have been dismissed by the Court below on the ground that the evidence in both the cases has been concluded and the matter is at the stage of arguments. Learned Counsel further submits that in the interest of justice and for proper adjudication of the controversy, the petitions need to be allowed since no prejudice will be caused to the respondents/accused since in both the cases, the entire controversy is one and the same except for the cheque which has been filed in one case instead of another. It is submitted that the amount in both the cheques is same and the drawer and drawee of both the cheques is one and the same. While one cheque for Rs.50,00,000/- is dated 22-12-2011, the other cheque for Rs.50,00,000/- is dated 06-01-2012. The defence of the accused is one and the same namely that the petitioner/complainant clandestinely has taken away the two cheques which were duly signed and used the same for unjust enrichment. Learned Counsel further submits that if the petitions are not allowed, the mistake which was out of sheer inadvertence and unintentional will affect the case of the complainant whereas if the request is acceded to, no prejudice will be caused to the respondents/accused since even though it may not be necessary, they will be entitled to cross-examine PW.1 who is sought to be recalled and set the record straight.

16. Learned Counsel appearing for the respondents/accused on the other hand submits that both the petitions are not maintainable either in law or on facts. It is submitted that by recalling a witness and calling for the documents, a fresh trial cannot be conducted and if the petitions are to be allowed, it will result in gross abuse of the process of law.

17. What is noticed from the above narration of facts is that, apparently, a serious mistake has been committed by the complainant or his Counsel on record. Two Calendar Cases are filed and in both the Calendar Cases, the

controversy was with regard to a cheque of Rs.50,00,000/- each said to have been issued by the 2nd respondent/accused and it was dishonoured. Both the cases were being taken up for trial simultaneously. Filing of the complaint, recording the sworn statement, and examining the accused under Section 251 Cr.P.C., is correctly made and it is in respect of cheque bearing No.021278, dated 06-01-2012, in C.C.No.814 of 2012, and in C.C.No.815 of 2012 the reference that was made till that stage was in respect of cheque bearing No.021192, dated 22-12-2011. At the time of filing of the affidavit in lieu of chief-examination, instead of producing and marking cheque No.021192, dated 22-12-2011 in C.C.No.815 of 2012, the cheque No.021278, dated 06-01-2012 in C.C.No.814 of 2012 is marked. This according to the learned Counsel is purely a mistake committed out of inadvertence in view of the facts stated above.

18. At the cost of repetition, it may be stated that in both the Calendar Cases, even though cheque numbers are different, but the drawer and the drawee is one and the same. The banks on which the cheques were drawn is the same. The bank in which the cheques were presented is the same. Statutory notice was issued which was identical. Reply thereto also given in both the cases. The complainant/PW.1 was elaborately cross-examined and the cross-examination was in respect of entire transaction and as a matter of fact, it is similar in both the cases.

19. The main objection of the learned Counsel appearing for the respondents is that at the stage of arguments, the petitions are filed to recall PW.1 and to call for the documents, which are already marked as exhibits in the connected Calendar Case. Whether this can be allowed or not is the point in issue.

20. Having carefully considered the entire material on record and having heard the comprehensive arguments advanced by both the learned Counsel and perusing the voluminous records including the original record which has been called for from the learned trial Court, I am of the considered opinion that the request of the petitioner/complainant needs to be considered in view of the facts and circumstances stated above and explained by the petitioner/complainant, and in view of the law as laid down by the Supreme Court in the following decisions.

21. The scope and ambit of recalling witnesses in criminal trial has fell for

consideration before the Apex Court on several occasions. In **NATASHA SINGH v. CBI** it is held in para 16 as under:-

“Fair trial is the main object of criminal procedure, and it is the duty of the Court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person’s right to fair trial be jeopardised. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the Court must be zealous in ensuring that there is no breach of the same.”

The scope of Section 311 Cr.P.C., was examined by the Supreme Court in **MOHANLAL SHAMJI SONI v. UNION OF INDIA** and held as under:-

“It is a cardinal rule of the law of evidence, that the best available evidence must be brought before the Court to prove a fact, or a point in issue. However, the Court is under an obligation to discharge its statutory functions, whether discretionary or obligatory, according to law and hence ensure that justice is done. The Court has a duty to determine the truth, and to render a just decision. The same is also the object of Section 311 Cr.P.C., wherein the Court may exercise its discretionary authority at any stage of the enquiry, trial or other proceedings, to summon any person as a witness though not yet summoned as a witness, or to recall or re-examine any person, though not yet summoned as a witness, *who are expected to be able to throw light upon the matter in dispute*, because if the Judgments happen to be rendered on an inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated.”

In **ZAHIRA HABIBULLAH SHAIK (5) v. STATE OF GUJARAT** the Supreme Court held as under in paras 26, 27, 28, 29 and 30 as under:-

“26. In this context, reference may be made to Section 311 of the Code which reads as follows:

“311. Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness or examine any person in attendance, though not summoned as a witness or recall and re-examine any person already examined, and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

The section is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequences, the first part gives purely discretionary authority to a Criminal Court and enables it at any stage of an enquiry, trial or proceeding under the Code (a) to summon any one as a witness, or (b) to examine any person present in Court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the Court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the Court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the Court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.

27. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on

summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.

28. As indicated above, the Section is wholly discretionary. The second part of it imposes upon the Magistrate an obligation: it is, that the Court shall summon and examine all persons whose evidence appears to be essential to the just decision of the case. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court. Sections 60, 64 and 91 of the Indian Evidence Act, 1872 (in short, 'Evidence Act') are based on this rule. The Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the Court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The Court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the Court has to act under the second part of the section. Sometimes the examination of witnesses as directed by the Court may result in what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge.

29. The object of the Section 311 is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of the orderly society. If a witness called by Court gives evidence against the complainant he should be allowed an opportunity to cross-examine. The right to cross-examine a witness who is called by a Court arises not under the provision of Section 311, but under the Evidence Act which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the Court could not be termed a witness of any particular party, the Court should give the right of cross-examination to the complainant. These aspects were highlighted in *Jamatraj Kewalji Govani V. State of Maharashtra* (AIR 1968 SC 178).

30. Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial, the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the

prosecution of persons who commit offences.”

A three-Judge Bench of the Supreme Court in a decision reported in **JAMATRAJ KEWALJI GOVANI v. THE STATE OF MAHARASHTRA** held as under:-

“It would appear that in our criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage or the trial to summon a witness or examine one present in Court or to recall a witness already examined, and makes this the duty and obligation of the Court provided the just decision of the case demands it. In other words, where the Court exercises the power under the second part, the inquiry cannot be whether the accused has brought anything suddenly or unexpectedly but whether the Court is right in thinking that the new evidence is needed by it for a just decision of the case.”

In **RAJENDRA PRASAD v. NARCOTIC CELL THROUGH ITS OFFICER** the Supreme Court held as:-

“We cannot therefore accept the contention of the appellant as a legal proposition that the Court cannot exercise power of re-summoning any witness if once that power was exercised, nor can the power be whittled down merely on the ground that prosecution discovered latches only when the defence highlighted them during final arguments, the power of the Court is plenary to summon or even recall any witness at any stage of the case if the Court considers it necessary for a just decision, The steps which the trial Court permitted in this case for re-summoning certain witnesses cannot therefore be spurned down nor frowned at.

In the same authority, the Supreme Court in para 8 held that no party in a trial can be foreclosed from correcting errors, that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

In a decision reported in **GODREJ PACIFIC TECH.LIMITED v. COMPUTER**

JOINT INDIA LIMITED challenge was to the Judgment of a learned single Judge of Punjab and Haryana High Court, which rejected an application filed under Section 311 Cr.P.C., for re-examination of the witnesses already examined. In the said matter, the trial Court also rejected the application primarily on the ground that the complaint was filed on 19-12-1996, the evidence was closed on 11-03-2004, and Section 313 Cr.P.C., examination was over on 12-07-2004. The contention therein was that the complainant gave his statement as a layman. But inadvertently he had not proved the relevant documents i.e., cheques, cheque returning memos, legal notice, courier receipt, letter from the complainant Bank even though the above said documents had already been proved by witnesses other than the complainant. The Supreme Court, relying upon other authorities on the subject, held that the trial Court ought to have permitted the prayer of the appellant (complainant) and that being so, the rejection of the prayer by the trial Court was not proper and the High Court should not have declined to interfere.

22. What could be gathered from the various authorities referred to above is that the endeavour of the Court should be to secure the best possible evidence and the parties should be given adequate opportunity to prove a fact or point in issue. The ultimate object of the Court should be to determine the truth and to render a just decision. Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. The interest of the accused, the victim and the society have to be kept in mind and under no circumstance can a person's right to fair trial be jeopardized. The object underlying Section 311 Cr.P.C., is that there may not be a failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. For the just decision of the case, whether a witness can be summoned or recalled has to be determined. The interest of all the stakeholders should be protected. Sometimes the examination of witness or recalling a witness may result in filling up loopholes but that is purely subsidiary factor and cannot be taken into account. The prime concern of the Court should be discovery, vindication and establishment of truth. A trial Court being a primary Court, every opportunity should be given to correct the errors. Similarly, if proper evidence was not adduce or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous

in permitting such mistakes to be rectified.

23. Applying the above dicta to the facts of the present case, as already stated, the request of the petitioner/complainant is to rectify the mistake which has inadvertently crept in. It is not as though that any new material has been proposed or intended to be imported. The respondent/accused cannot also be said to be taken by surprise by the evidence proposed to be let in. No prejudice, whatsoever, will be caused to the respondent/accused, but, on the other hand, if the request is not acceded, it will result in not only prejudice to the complainant but miscarriage of justice. Neither party to a *lis* can be allowed to take undue advantage of the *bona fide* and inadvertent mistake which clearly falls foul of the cardinal principle of criminal justice or the criminal trial namely a fair trial. The mistake, which is apparent on the face of the record, needs to be rectified and no ambiguity should be allowed to be on record. For instance, in the instant case, if the evidence as already been let in is allowed to be on record, ambiguous and anomalous situation will arise, namely while in the complaint, in the sworn statement, and in the examination under Section 251 Cr.P.C., reference is with regard to cheque bearing No.021192, dated 22-12-2011 whereas the evidence adduced and the documents produced are in respect of cheque bearing No.021278, dated 06-01-2012, which, in fact, is the subject matter of the connected Calendar Case.

24. As stated above, no prejudice will be caused to the respondent/accused for the reason that pointed and specific defence in both the Calendar Cases in respect of both the cheques is one and the same namely, that the petitioner/complainant has taken the two cheques from the current account bearing No.285 of the Company and has mis-used both the cheques bearing Nos.021192, dated 22-12-2011, which is the subject matter of C.C.No.815 of 2012, and cheque bearing No.021278, dated 06-01-2012, which is the subject matter of C.C.No.814 of 2012. The specific case of the respondents/accused is that it is complainant/petitioner who has mis-used the blank cheques which the complainant has taken during his association with A.2 Company and filed a false complaint. The suggestion that is put to PW.1/complainant/petitioner in the cross-examination is that the complainant received Rs.1,00,00,000/- from A.2 Company and misappropriated the same and that the cheque bearing No.021192 dated 22-12-2011 for Rs.50,00,000/- and another cheque bearing

No.021278, dated 06-01-2012, for Rs.50,00,000/-, each were drawn on Indian Overseas Bank, Nakkapally branch, were issued from the Current Account bearing No.285 of the Company. It is also suggested to PW.1 that the said account is a Joint Account which was to be operated by one Alla Venkat Reddy and A.1 and that since the cheques contain signature only of A.1, the cheques are invalid.

25. On behalf of the respondents/accused, reliance is placed upon the decision of the Supreme Court reported in **MIR MOHD.OMAR v. STATE OF W.B., and MANGI LAL v. THE STATE AND ANOTHER**. But upon perusing the authorities, it is noticed that the point in issue is not the one in hand. In both the cases, the question was as to the power of the Court under Section 278 Cr.P.C., which deals with correction of the evidence of a witness already recorded. The following observations are made by the Supreme Court in **Mir Mohd.Omar's case** (referred 7 above) in paras 14 and 15:-

“The object of Section 278 is two fold: firstly to ensure that the evidence of the witness as recorded is accurate and secondly to give the witness concerned an opportunity to point out mistakes, if any. If the correction suggested by the witness is one which the Judge considers necessary he will make it at once as required by sub-sec.(1) but if the correction is such that the Judge does not consider necessary, sub-sec.(2) requires that a memorandum of the objection be made and the Judge add his remarks, if any, thereto. In the present case, the learned trial Judge corrected all the typographical errors which he considered necessary but refused to carry out the substantive part of his deposition. The Section is not intended to permit a witness to resile from his statement in the name of correction. The learned trial Judge was justified in refusing to effect the change which he thought was intended to change the earlier version. He did not make a memorandum as the correction slip was unsigned and was not properly filed. Now, since the correction slip as well as the remarks of the learned trial Judge have become a part of the record, nothing more need be done as the provisions of S.278 are substantially complied with.

We equally see no justification for the High Court for giving liberty to the prosecution to file an application for re-examination of PW.34. In fact it will be seen from the operative portion of the impugned order the High Court proceeds on the assumption that PW.34 would be recalled for further examination. Here again it may be noted that the prosecution

has closed the evidence. The accused have been examined under Section 313 of the Code. The prosecution did not at any stage move the trial Judge for recalling PW.34 for further examination. In these circumstances, the liberty reserved to the prosecution to recall PW.34 for re-examination is undoubtedly uncalled for.”

26. As already stated, the controversy in the instant case is not what was before the decision referred to by the learned Counsel appearing for the respondents/accused.

27. Upon carefully perusing the entire material on record and in view of the foregoing discussion, I have no hesitation in holding that the learned Magistrate has erred in rejecting the request of the petitioner/complainant to recall PW.1 and to re-examine him after summoning the documents relevant in the instant case from the connected Calendar Case, which have been inadvertently filed. In that view of the matter, the impugned order is liable to be set aside and both the Crl.M.Ps., are allowed.

28. In the result, both the Criminal Revision Cases are allowed and the impugned orders are set aside. The request of the petitioner/complainant in Crl.M.P.Nos.1441 and 1442 of 2013 in C.C.No.815 of 2012 shall stand granted.

Miscellaneous petitions, if any, pending in these revision cases shall stand closed.

M.S.K.Jaiswal, J

November, 2015

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