

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1103 OF 2016

Sharda Jayakumar	...	Petitioner
vs.		
Ravikant Sharma & Anr.	...	Respondents

WITH
CRIMINAL WRIT PETITION NO. 1104 OF 2016

K.C.Jayakumar	...	Petitioner
vs.		
Ravikant Sharma & Anr.	...	Respondents

Ms. Poonam Ankleshwaria, Advocate for the petitioner (in both matters)
Ms. Avanti Inamdar a/w Mr. Rameshwar Gite, Advocate for respondent
No.1.
Ms. A.T.Jhaveri, APP, for the State.

CORAM: SMT. SADHANA S.JADHAV, J.
DATE : 28th June, 2016.

P.C.

Rule. Rule made returnable forthwith with the consent of the parties.

2. The petitioners herein happen to be accused in C.C.Nos. 3603 of 2011 and 3604 of 2011. which were decided by the 5th Joint Judicial Magistrate, First Class, Thane, vide judgment and order dated 17th May, 2014. The petitioners herein are convicted by the trial Court for the offence

punishable under Section 138 of the Negotiable Instruments Act and are sentenced to two months of simple imprisonment and Rs.5,00,000/- and Rs.4,50,000/- respectively towards fine/compensation.

3. At the stage of final hearing of the appeal i.e. on 10.2.2016, the petitioners filed an application under Section 391 of Cr.P.C. with a prayer that the matter be remanded for recording of further evidence in the matter.

4. The contents of the application in paras 6 and 7 run as follows :-

“6) During the course of trial the Accused could not trace these very important documents and pleadings of parties which go to the root of the entire case. Just to cite as an example is a loan given to the appellant in May 2009 and repayment made in December, 2010, prior to that in August 2010, the Complainant advanced loan to the appellant's wife. At this juncture, it will not be in the interest of justice to disclose the other documents because the Accused is desirous of confronting the Complainant with the said document under section 145 of the Evidence Act. For this reason also additional evidence is to be recorded.

7) The evidence with respect to another notice issued u/s. 138 of N.I. Act for the another loan given by the Complainant

himself, to appellant wife, is also absolutely important. This document is an admitted one and a detail and searching cross with respect to the said document.”

It is not the case of the petitioners that the said documents were not in the custody of the petitioners at the time of trial. it is neither the case of the petitioners that the said facts were not within the knowledge of the petitioners. Even at the stage of Section 313 of Cr.P.C., no such averments as contended in paras 6 and 7 were brought before the trial Court. An appeal was filed. After two years of filing of the appeal, only when the appeal came up for final hearing, an application was made under Section 391 of Cr.P.C. The learned appellate Court has rightly observed as follows :-

“He (appellant) has tried to convince the court by referring the cryptic cross-examination of witness No.2 i.e. wife of Mr. Rvikant Sharma examined in both the matters and point out that the learned Trial Court has just copied the cross-examination conducted in one matter to the other. Hence, according to the learned advocate proper opportunity was not given to the accused to conduct the cross-examination. he has also pointed out that it was inadvertent mistake of advocate who appeared before the Trial Court of not confronting the other notice issued by original complainant to the accused. “

Hence, according to the petitioners, the litigant should not be punished for

the fault of the Advocate. The learned appellate Court has rightly observed that there was no dearth of opportunity given to the petitioner or his advocate. The learned Sessions Court has rightly observed that the entire process of trial and appeal cannot be interfered for a mistake of the advocate which the petitioner has labelled as inadvertent. By referring to it as an inadvertent mistake, it would mean that the petitioners had not given proper instructions to the Advocate and, therefore, it was not a deliberate mistake, but an inadvertent mistake.

5. The learned counsel submits that the learned appellate Court has considered that no complaint was filed against the Advocate before the Bar Council. In any case, if it is the case of the petitioners that it was an inadvertent mistake, there would be no occasion to file a complaint against the Advocate. The learned appellate Court has also observed that there is no specific reference of any specific document, but has made a vague reference of one notice that too about the other loan disbursed to the appellant by the complainant has been made. In para 6 of the application, the petitioner had specifically contended that he would not like to bring the other documents on record, but would like to cross-examine the complainant. This Court is of the opinion that unless a case is made out for

exercising powers under Section 391 of Cr.P.C. before the learned Court, it would not be in the interest of justice to remand the matter. This Court is also concerned with the fact that by seeking a remand, the petitioner is shuttling the matter from one Court to another. It is undisputed that at one time three courts would be seized with the same dispute and hence it would be proper for the appellate Court to dispose of the appeal. The reasons assigned by the appellate Court are justifiable and hence do not call for any interference.

6. At this stage, the learned counsel for the petitioners submits that the petitioners be granted liberty to raise all these issues in oral arguments at the time of hearing of the appeal. Liberty is granted. However, the learned appellate Court is directed that the said arguments be considered in the proper perspective and shall be dealt with in accordance with law.

7. Rule is discharged. Both the Petitions stand disposed of.

(SMT.SADHANA S.JADHAV, J.)