

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.04.2016

Coram:

THE HON'BLE Mr.JUSTICE M.VENUGOPAL

Crl.R.C.No.646 of 2016 and
Crl.M.P.No.4542 of 2016

Mrs.Hemalatha Kalyanaraman
Proprietrix Kalyan Leathers,
No.52, Vada Agaram First Sgstreet,
Choolaimedu,
Chennai - 600 094 ..Petitioner/Accused

Vs.

M/s Meeruri Tanners
No.21, Palaniappan Street,
Periyar Nagar, Nagalkeni
Chennai - 600 044
rep. By its Partner,
Mr.M.Muralidharan ...Respondent/Complainant

Prayer: Petition filed under Section 401 of Cr.P.C., to call for the entire records pertaining to the order dated 29.02.2016 in C.M.P.No.33 of 2015 in Criminal Appeal No.37 of 2014 passed by the XVI Additional City Civil Court, Chennai and set aside the dismissal order dated 29.02.2016.

For Petitioner : Mr.R.Ramakrishnan

O R D E R

Heard the Learned Counsel for the Revision Petitioner/Appellant/Accused.

2.The Revision Petitioner has preferred the instant Criminal Revision Case as against the Impugned Order dated 29.02.2016 in Crl.M.P.No.33 of 2015 in Crl.A.No.37 of 2014 passed by the Learned XVI Additional Judge, City Civil Court, Chennai.

3. The Learned XVI Additional Judge, City Civil Court, Chennai while passing the Impugned Order in Crl.M.P.No.33 of 2015 in C.A.No.37 of 2014 on 29.02.2016 at Paragraph No.8 had observed the following:-

"8. It is not explained by the petitioner/accused how the additional document which she wants to mark will strength the case of the accused. At the same time it is not explained how it will weaken the case of the complainant. On the side of the accused the Manager of Syndicate Bank alone was examined and the accused has not come to box to give evidence. It appears the accused wants to gain time by filing this application and to take on appeal and to kept pending before the court endlessly. It appears it is the hidden agenda of the petitioner / accused not to reach finality but to prolong. All the trial records are is available before this court. If the petitioner / accused really wants to establish tampering of records she could establish during the course of arguments. But the purpose of filing this application it is something else but not for the reason stated therein. This Crl.M.P. Is filed after many hearing of adjournments for arguments. No merits in this application."

and resultantly dismissed the Petition.

4. Being dissatisfied with the Order of dismissal dated 29.02.2016 in Crl.M.P.No.33 of 2015 in C.A.No.37 of 2014 (filed by the Revision Petitioner / Appellant), the Revision Petitioner has focused the instant Criminal Revision Case before this Court by taking a plea that the Appellate Court had failed to assess and appreciate the pleadings of the Revision Petitioner to mark the 'Reliable Documents' to prove her case.

5. The Learned Counsel for the Revision Petitioner contends that the Appellate Court at the time of passing the Impugned Order had not appreciated a very vital fact that there is a conflict between two C.C.Numbers, which was tampered and overwritten to make it suitable for the exhibits which was marked as exhibits, (i.e., the complaint was supported by unconnected documents)

6. The Learned Counsel for the Petitioner projects an argument that the Appellate Court had denied a reasonable opportunity to the Petitioner to present her case by marking concerned documents as exhibits.

7. Lastly it is the stand of the Revision Petitioner that the Appellate Court had erroneously presumed that the available Court documents itself are adequate to present the Revision Petitioner's case, while the certified copy of the concerned documents are in the custody of the Revision Petitioner / Appellant.

8. At this stage, this Court has perused the contents of affidavit in CrI.M.P.No.33 of 2015 in CrI.A.No.37 of 2014 (filed by the Revision Petitioner / Appellant before the trial court) and is of the considered view that the Petitioner had referred to (i) Certified copy of complaint in C.C.No.8904 of 2004 dated 22.07.2008 (ii) Certified copy of complaint in C.C.No.8903 of 2004 dated 25.02.2014 and (iii) Certified copy of complaint in C.C.No.8903 of 2004 dated 25.02.2014 and prayed for passing of an Order to mark the said documents as exhibits.

9. It is to be noted that the Respondent/Complainant had filed the complaint under Section 138 of Negotiable Instruments Act, 1881. It transpires that the Respondent / Complainant had filed two cases, namely, C.C.No.8903 of 2004 and C.C.No.8904 of 2004 on the file of trial court against the Revision Petitioner.

10. The main grievance of the Revision Petitioner is that at the time of trial in C.C.No.8903 of 2014 Two Cheques, Return Memo, Legal Notice and Acknowledgment Card were marked as Exhibits P.3 to P.8 respectively. However, the aforesaid exhibits were not connected in regard to the complaint in C.C.No.8903 of 2004. Likewise in C.C.No.8904 of 2004, Two Cheques, Return Memo, Legal Notice and Acknowledgment Card were marked as Exhibits P.3 to P.8 respectively. Added further, all the said exhibits were not connected with the complaint in C.C.No.8904 of 2004. After deliverance of Judgment by the trial court, it is the case of the Revision Petitioner that she had applied and received another certified copy of the said two complaints and then only she came to know that in both the cases, the C.C.Numbers were tampered and changed the C.C.No.8903 of 2004 as C.C.No.8904 of 2004 and C.C.No.8904 of 2004 as 8903 of 2004.

11. It is to be borne in mind that Section 391 of Cr.P.C., does not provide that an additional evidence can be taken only, if it favours the defence and not if it favours the prosecution. The well settled position of Law is that if an Appellate Court thinks that the additional evidence is necessary in the interests of justice and for a just and proper decision of the case, the Appellate Court should instead of directing the retrial of the main case, is empowered to exercise its powers in terms of Section 391 of Cr.P.C., as per decision *Rambhau V. State of Maharashtra* reported in AIR 2001 SCC at Page 2120

12. Also that an 'Additional Evidence' may be necessary not because it would be impossible to deliver judgment but because there would be a failure of justice without it as per decision *Rajeswar Prasad Misra V. State of West Bengal* reported in AIR 1965 Supreme Court at Page 1887.

13. That apart an 'Additional Evidence' is not to be permitted to fill up lacuna or gaps in the prosecution case. Section 391 of Cr.P.C., cannot be pressed into service either as a matter of routine or as a matter of course, in the considered opinion of this Court. The said power is to exercise by a Court of Law with great care, and circumspection. Even the Hon'ble High Court can exercise its suomoto power under Section 391 Cr.P.C., in the interest of justice.

14. Besides the above, one cannot ignore a primordial fact that the essential object of Section 391 of Cr.P.C., is the prevention of guilty person's escape through some careless or ignorant proceedings before a Court or vindication of an innocent individual wrongfully accused. In short Section 391 of Cr.P.C., contemplates further enquiry by taking additional evidence when the conviction by the trial court was based upon some evidence which might legally support it, but which in the opinion of appellate court is not satisfactory.

15. As far as the present case is concerned, it comes to be known that the C.A.No.37 of 2014 is in 'Arguments stage'. The Appellate Court had clearly opined in the Impugned Order that only with a view to prolong the case, the Revision Petitioner / Accused had filed the Crl.M.P.No.33 of 2015 in C.A.No.37 of 2014.

16. Moreover, the trial court had granted numerous adjournments for advancing arguments in C.A.No.37 of 2014. Obviously the Revision Petitioner had filed the Crl.M.P.No.33 of 2015 at the belated point of time. Moreover, it appears that the complaint was taken on file as early as in the year 2004 and that the trial court had passed the Judgment on 29.02.2014.

17. Looking at from any angle and on going through the Impugned Order dated 29.02.2016 in Crl.M.P.No.33 of 2015 in C.A.No.37 of 2014, this Court without any haziness comes to an consequent conclusion that the present Criminal Revision Case sans merits.

18. In the result the Criminal Revision Case is dismissed. Consequently connected Miscellaneous Petition is closed. Resultantly, the Order dated 29.02.2016 in Crl.M.P.No.33 of 2015 in C.A.No.37 of 2014 is affirmed by this Court for the reasons assigned in this Criminal Revision Case. It is made quite clear that the dismissal of the present Criminal Revision Case filed by the Petitioner will not preclude her to raise all factual and legal pleas (including about the documents relied upon by the Revision Petitioner) at the time of hearing of C.A.No.37 of 2014. The Appellate Court is directed to take up C.A.No.37 of 2014 for final disposal and to dispose of the same within a

period of 45 days from the date of receipt of a copy of this Order. The Appellate Court is directed to provide enough opportunities to the Revision Petitioner/Appellant/Accused and to the other side by adhering to the principles of natural justice. The Revision Petitioner is directed to lend her helping hand to the Appellate Court in regard to the completion of proceedings in C.A.No.37 of 2014, within the specified time adumbrated supra.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

- 1.The XVI Additional City Civil Court,
Chennai.
- 2.The XIII Metropolitan Magistrate,
Egmore, Chennai.
- 3.Thro The Chief Metropolitan Magistrate,
Chennai.

+1cc to M/S.R.Ramakrishnan, Advocate sr.24912

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Rsi[co]
srg 10/05/2016

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