

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.31 of 2016

ORDER:

1) Challenging the order dated 20.11.2015 passed in CrI.M.P.No.1360 of 2005 in C.A.No.277 of 2014 on the file of the Principal Sessions Judge, Guntur, wherein the application filed to receive the documents as additional evidence was rejected, the present revision is filed.

2) The facts which lead to filing of revision are as under:

The second respondent herein filed a complaint against the petitioner and others for the offences punishable under Sections 120-B, 166, 167, 217 and 218 read with 34 IPC. The said case was taken on file as C.C.No.166 of 2008 on the file of the Additional Judicial Magistrate of First Class, Ponnur. By its judgment, dated 12.08.2014 the trial Court convicted the petitioner and other accused for the above mentioned offences and sentenced each one of them to suffer various terms of imprisonment. Challenging the same, the petitioner preferred CrI.A.No.277 of 2014 before the Principal Sessions Judge, Guntur. Pending the said appeal, the petitioner filed CrI.M.P.No.1360 of 2015 under Section 391 Cr.P.C. requesting the Court to receive the certified copy of judgment rendered in ATA No.8 of 2010, dated 06.07.2001 and the order dated 12.06.2015 passed by this Court in C.R.P.Nos.3591 of 2011 and 816 of 2011, as additional evidence. The said application was

dismissed by the learned Sessions Judge. Aggrieved by the same, the present revision is filed.

3) Heard learned counsel for the petitioner and the second respondent appearing in-person.

4) The reason for rejection of the application was that these documents which are now sought to be marked are very much available even before the judgment of the trial Court and as such nothing prevented them from producing these documents during the course of trial. It was further held that since no valid reasons are given for not producing the documents pending trial though they are very much available rejected the request.

5) The second respondent, who appeared in-person, mainly argued that this revision is not maintainable since the said order which has been passed is an interlocutory order. To which, learned counsel for the petitioner mainly submits that this is not an interlocutory order in its true sense but it has to be treated as intermediary order and since the rights of the parties are substantially effected if the same is not brought on record and as no prejudice would be cause to the parties by bringing the said documents on record submits that the revision would lie.

6) With regard to argument advanced by the learned counsel for the second respondent appearing in-person that no revision would lie against an order passed under Section 391 Cr.P.C. it would be useful to refer to the judgment of the Apex Court in *Amar Nath v.*

*State of Haryana*¹. Dealing with the said aspect the Apex Court observed as under:

“6...The main question which falls for determination in this appeal is as to what is the connotation of the term “interlocutory order” as appearing in sub-section (2) of [Section 397](#) which bars any revision of such an order by the High Court.

The term “interlocutory order” is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including [the Code](#) of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster’s New World Dictionary “interlocutory” has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term “interlocutory order” in [Section 397\(2\)](#) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in [Section 397](#) of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under [Section 397\(2\)](#) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be

¹ (1977) 4 SCC 137

interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.”

7) A reading of the judgment of the Apex Court referred to above makes it clear that the orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.

8) Since the impugned order, in the instant case, substantially adjudicated the rights of the accused it cannot be said to be an interlocutory order. The said order cannot be said to be an order passed in aid of pending proceedings, but definitely an order which goes to the root of the matter substantially affecting the rights of the parties. Further no prejudice would be caused to the second respondent since the said orders are passed on judicial side. Hence, the objection raised by the second respondent cannot be accepted.

9) Coming to the merits of the case, the two documents which are now sought to be marked are certified copy of judgment rendered in ATA No.8 of 2010, dated 06.07.2011 and the order of this Court dated 12.06.2015 in C.R.P.Nos.3591 of 2011 and 816 of 2011. Insofar as order dated 12.06.2015 is concerned, the said order was not available to either of the parties on the date of judgment of the trial Court. Insofar as the other order dated 06.07.2011 is concerned, the same was available but this being an order passed by a competent authority, the contents of which are

known to both the parties, no prejudice would be caused if the same is brought on record.

10) The question now is whether the said documents are necessary to be brought on record.

11) The said issue was not gone into by the appellate Court while deciding the relevancy or otherwise of the said documents while dealing with the application filed under Section 391 Cr.P.C.

12) A perusal of the averments in the complaint and also the judgment of the trial Court show that there exists a dispute between the 2nd respondent herein and one Indira Devi and others. A.T.C.No.2 of 2003 was filed by the 2nd respondent before the Special Officer, Andhra Pradesh Tenancy Tribunal-cum-Principal Junior Civil Judge, Ponnur, to declare that he is entitled to purchase the petition schedule property and direct Indira Devi to receive sale price in nine instalments and to declare that the registered sale deed dated 03.02.2006 executed by her as null and void. The said A.T.C. was allowed. Aggrieved by the same, the said Indira Devi preferred A.T.A.No.8 of 2010 and the purchasers filed A.T.A.No.2 of 2010. The learned appellate Judge allowed both the appeals by setting aside the orders passed in A.T.C.No.2 of 2003. Thereafter, the second respondent herein filed C.R.P.Nos.816 of 2011 and 3591 of 2011 before this Court. By an order dated 12.06.2015 this Court dismissed the above Civil Revision Petitions.

13) The allegation against the petitioner is that he along with others failed to investigate the matter in a proper manner and accused No.3 failed to exercise supervision over the investigation.

14) In *Zahira Habibulla H. Sheikh and another v. State of Gujarath and others*² wherein the Apex Court held as under:

“The question of admission of evidence initially or as additional evidence under [Section 391](#) is distinct from the efficacy, reliability and its acceptability for consideration of claims in the appeal on merits. It is only after admission, the Court should consider in each case whether on account of earlier contradiction before Court and the testimony allowed to be given as additional evidence, which of them or any one part or parts of the depositions are creditworthy and acceptable, after a comparative analysis and consideration of the probabilities and probative value of the materials for adjudging the truth. To reject it merely because of contradiction and that too in a sensitised case like the **one** before Court with a horror and terror oriented history of its own would amount to conspicuous omission and deliberate dereliction of discharging functions judiciously and with a justice-orientated mission. In a given case when the Court is satisfied that for reasons on record the witness had not stated truthfully before the trial Court and was willing to speak the truth before it, the power under [Section 391](#) of the Code is to be exercised. It is to be noted at this stage that it is not the prosecution which alone can file an application under [Section 391](#) of the Code. It can also be done, in an appropriate case by the accused to prove his innocence. Therefore, any approach without pragmatic consideration defeats the very purpose for which [Section 391](#) of the Code has been enacted. Certain observations of the High Court like, that if the accused persons were really

² (2004) 4 SCC 158

guilty they would not have waited for long to commit offences or that they would have killed the victims in the night taking advantage of the darkness and/or that the accused persons had saved some persons belonging to the other community were not only immaterial for the purpose of adjudication of application for additional evidence but such surmises could have been carefully avoided at least in order to observe and maintain the judicial calm and detachment required of the learned Judges in the High Court.”

15) Having regard to the same, the appellate Court shall take these documents on record in accordance with law and then test the relevancy of the same at the time of passing the final orders in the appeal.

16) In view of the judgment referred to above, and since no prejudice would be caused in accepting the two documents which are sought to be marked as additional evidence, the Criminal revision Case is allowed. However, the relevancy of the said documents shall be gone into at the time of passing of the judgment in the appeal. Miscellaneous petitions, if any, pending, shall stands closed.

C. PRAVEEN KUMAR, J

21.09.2016
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