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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.M.C. 1701/2016 & Crl.M.A. No.7203/2016**

Date of Decision : 23rd August, 2016

M/S GANESH TECHNOLOGIES PVT. LTD.

& ANR

..... Petitioners

Through Mr.Manoj Saxena, Mr.Manu
Parashar & Mr.Ram Krishna,
Advs.

versus

M/S SCHNEIDER ELECTRIC INDIA P LTD Respondent

Through None.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 482 of the Code of Criminal Procedure (Crl.P.C.) has been preferred by the petitioners for setting aside the interim order dated 12th April, 2016 passed by the learned Additional Sessions Judge, Patiala House Court, New Delhi in C.A. No.21/1/2015 and, thereby, allowing petitioners for leading and adducing further evidence and also producing the relevant witnesses for the purpose.

2. A thumbnail sketch of the facts of the case as stated by learned counsel for the petitioners is that the petitioners had put an order to the respondent for supply of Compact Substation for a

total consideration of Rs.1,16,00,000/- out of which the petitioners had paid Rs.77,00,000/- to the respondent and a sum of Rs.41,59,126/- was the remaining balance. The respondent-M/s Schneider Electric India Private Limited, had written a letter dated 6th May, 2010 to the present petitioners for issuing a cheque of the remaining balance amount of Rs.41,59,126. It is stated that on the request of the respondent, the petitioners issued a cheque bearing no.967038 dated 25.5.2010 on the same day and handed over to the respondent.

3. It is the case of the petitioners that after issuing the said cheque, the petitioners came to know that the equipment supplied by the respondent was defective. A request for removal of the defect was made orally by the petitioners but no response thereof was received from the respondent. Thereafter, the petitioners gave instruction to their banker on 21st May, 2010 not to honour the cheque No.967038 dated 25th May, 2010 because the respondent did not fulfil the contractual requirement. A letter dated 15th June, 2010 was also sent by the petitioners to the respondent stating therein that since the Compact Substation was found defective, they have issued instruction to their Banker to stop payment thereof but despite that the respondent deposited the cheque in the bank.

4. It is further submitted by learned counsel for the petitioners that on 16th August, 2010, the respondent issued a legal notice to the petitioners against stop payment of the stated cheque and on 30th September, 2010, the respondent filed a complaint under Section 138 of the Negotiable Instruments Act before the Metropolitan Magistrate, Patiala House, New Delhi. It is next submitted that during the trial, the statement under Section 313 Cr. P.C. was recorded in which the petitioners had clearly stated that “we issue purchase order not sale order. Items were not delivered as per the agreement as they were defective”.

5. It further transpires that vide order dated 3rd September, 2015, the petitioners had been convicted to undergo imprisonment for a term of three months and also imposed compensation of Rs.70,00,000/- to be paid to the complainant within one month from the date of judgment and in default, to undergo simple imprisonment for three months. The petitioners thereafter preferred an appeal before the learned Additional Sessions Judge, Patiala House, New Delhi, against the order dated 3rd September, 2015.

6. It is the case of the petitioners that during the pendency of the appeal, the counsel for the petitioners came to know about the letters dated 21st May, 2010 and 15th June, 2010 which were

necessary for the purpose of disposal of the case. An application under Section 391 Cr. P.C. was preferred by the petitioners instantaneously inter alia making the following prayer:-

“allow the applicant to lead and adduce further evidence contained in Annexure A-1 to A-4 as additional evidence and also to produce relevant witnesses for the purpose.”

7. However, the said application was dismissed by the Court vide order dated 12th April, 2016 on the ground that the petitioners had preferred the application only to fill in the lacunae in his case before the Trial Court by imputing allegations against his counsel.

8. In support of his contention, learned counsel for the petitioners relies on the pronouncement of the Supreme Court in ***Rambhau's case (2001) 4 SCC 759.***

9. I have heard learned counsel for the parties at length; gone through the available records and judgments cited by learned counsel for the petitioners. The petitioners' application under Section 391 Cr. P.C. before the Court below for taking into consideration the further evidence/documents, was just to fill in the lacunae inasmuch as the same were not put in cross-examination and were also not put in defence evidence by the petitioners in trial Court. The said two letters were also not mentioned in the appeal

which was preferred by the petitioners. It reflects from the record that despite the opportunity granted, the petitioners could not lead any defence evidence and their right was also closed vide separate statement dated 16th January, 2015.

10. In **Zahira Habibulla H. Sheikh and Anr. Vs. State of Gujarat and Ors. AIR 2004 SC 346**, the law on Section 391 of the Code of Criminal Procedure, regarding taking further evidence or direct it to be taken, has been discussed thus:-

“47. Section 391 of the Code is another salutary provision which clothes the Courts with the power of effectively decide an appeal. Though Section 386 envisages the normal and ordinary manner and method of disposal of an appeal, yet it does not and cannot be said to exhaustively enumerate the modes by which alone the Court can deal with an appeal. Section 391 is one such exception to the ordinary rule and if the appellate Court considers additional evidence to be necessary, the provisions in Section 386 and Section 391 have to be harmoniously considered to enable the appeal to be considered and disposed of also in the light of the additional evidence as well. For this purpose it is open to the appellate Court to call for further evidence before the appeal is disposed of. The appellate Court can direct the taking up of further evidence in support of the prosecution; a fortiori it is open to the court to direct that the accused persons may also be given a chance of adducing further evidence. Section 391 is in the nature of an exception to the general rule and the powers under it must also be exercised with great care, specially on behalf of the prosecution lest the admission of additional evidence for the prosecution operates in a manner prejudicial to

the defence of the accused. 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. Where the court through some carelessness or ignorance has omitted to record the circumstances essential to elucidation of truth, the exercise of powers under Section 391 is desirable.

48. The legislature intent in enacting Section 391 appears to be the empowerment of the appellate court to see that justice is done between the prosecutor and the persons prosecuted and if the appellate Court finds that certain evidence is necessary in order to enable it to give a correct and proper findings, it would be justified in taking action under Section 391.

49. 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. There is nothing in the provision limiting it to cases where there has been merely some formal defect. The matter is one of the discretion of the appellate Court. As re-iterated supra the ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the public prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the Court in the discharge of its judicial functions.”

11. In view of the above case law and the facts and circumstances of the present case, the evidence which the

petitioners sought to produce with the aid of Section 391 Cr.P.C., does not appear to be essential and justified to the just decision of the case. Section 391 Cr.P.C. casts discretion upon the Court while exercising its power under Section 391 Cr.P.C., to satisfy itself that the additional evidence is necessary and it is not possible to arrive at a just conclusion on the basis of the records. For that purpose, it has to apply its mind to the evidence already on record and thereafter decide whether it feels any additional evidence to be necessary. In view of the facts brought on record, this Court is of the view that a prima facie case is not made out that the evidence sought to be produced by the petitioners is necessary and essential for just and proper decision. It is apparent from the record that the petitioners were having sufficient opportunity to examine such an evidence before the Trial Court and also before the appellate Court, but he did not disclose existence of any such letters before the Courts below. It was not his defence also that any such letters were in existence at the time of trial. It is only during the pendency of the appeal he claimed that such letters were existing which he sought to produce on record. Such an act of the petitioners cannot be appreciated as it is resulting into delay in the disposal of the case and no question of pressing into service Section 391 of the Code arises.

12. In view of the facts and circumstances mentioned above, this Court is of the considered opinion that the petitioners are trying to delay the judicial proceedings to avoid the outcome or gain an advantage instead of leading the case to final arguments on merits.

13. In the aforementioned facts and circumstances, this Court does not find any infirmity in the order dated 12th April, 2016 passed by the learned Additional Sessions Judge.

14. As a result of the same, the present petition and application are dismissed.

(P.S.TEJI)
JUDGE

AUGUST 23rd, 2016
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