

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

Crl.R.C. Nos.3261 and 3262 of 2016

COMMON ORDER:

The petitioners 1 to 4 in Crl.R.C. No.3261 of 2016 are accused in C.C. No.106 of 2012 on the file of the III Special Magistrate, Miyapur, which is filed by the revision 2nd respondent for the offence punishable under Section 138 of N.I Act against them. Aggrieved by the conviction judgment dated 11.03.2013 in C.C. No.106 of 2012, they maintained the Criminal Appeal No.196 of 2013. Similarly the sole accused in C.C. No.317 of 2012 on the file of Special Metropolitan Magistrate Court No.III, Kukatpally at Miyapur, maintained the Criminal Appeal No.195 of 2013 aggrieved by the conviction judgment. During pendency of the two appeals, the petitioners filed two applications i.e., Crl.M.P. Nos.34 and 33 of 2016 respectively under Section 391 of Cr.P.C to receive the self same documents in both the appeals. The appellate Court dismissed the two applications vide separate orders dated 07.12.2016. It is impugning the same, the present revisions are maintained.

2) Heard both sides at length and perused the material on record.

3) From the very wording of Section 391 Cr.P.C is akin to Section 165 of the Indian Evidence Act, from which it is clear that whether the appellate Court feels the additional evidence is necessary for effective disposal of the case, it may permit. It is not a right of the party of invoking provision but the discretion of the Court. Here, the impugned orders of the lower Court respectively read as if despite opportunity to file not filed, thereby belated application could not have been filed and the appellate Court dismissed the same. The

criteria for receiving of additional documents from the provision is not a mere delay of filing, but for to consider as if additional evidence is necessary or not.

4) A perusal of the documents in question, though stated by the complainant that they are no way necessary for effective adjudication of the appeal lis it shows exhibition of a judgment in which these documents now sought to receive as additional evidence referred as already filed before the trial Court. It is crystal clear therefrom that these documents are not subsequent inventions and thereby it can be received for otherwise necessary to consider them as additional evidence to decide the lis by the lower Court's respective orders are liable to be set-aside.

5) Accordingly and in the result, the revisions are allowed by setting aside the respective dismissal orders dated 08.03.2016 passed in CrI.M.P. Nos.34 and 33 of 2016 by the appellate Court, subject to payment of costs of Rs.1,000/- for each of the two applications, payable by the petitioners to the 2nd respondent—complainant. Since costs paid in open Court, the appellate Court by virtue of this order, restore the two applications by receiving the documents as additional evidence and dispose of the two appeals as expeditiously as possible, preferably within four (4) months from the date of receipt of copy of this Court.

6) Consequently, pending miscellaneous petitions, if any, shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:20.01.2017
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