THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Criminal Revision Case No. 1582 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, (for short, 'the Code') by the unsuccessful respondent/accused is directed against the orders, dated 08.05.2017, of the learned XXIII Special Magistrate, Hyderabad, passed in Crl.M.P.No.1270 of 2017 in C.C.No.170 of 2016.

2. I have heard the submissions of *Sri K.Komireddy*, learned counsel appearing for the accused/petitioner herein and of *Sri Venugopal Julanakanti*, learned counsel appearing for the 1st respondent/complainant. I have also heard the submissions of the learned counsel appearing for the 2nd respondent, State of Telangana. I have perused the material record.

3. The facts, which require reference and consideration, in brief, are as follows:

The 1st respondent/complainant (hereinafter, 'complainant') filed a complaint before the Court of the learned Additional Chief Metropolitan Magistrate requesting to punish the petitioner/accused (hereinafter, 'accused') for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The accused is resisting the said case. When the said case is coming up for further evidence of the complainant, the complainant filed the aforementioned petition under Section 311 of the Code requesting to recall PW1 for the purpose of marking certain documents, i.e., IT returns for the financial year 2014-2015 and 2015-2016, the letter issued by the chartered accountant and a Bank account statement. The said petition was resisted by the accused. On merits and by the order impugned in this revision, the said petition was allowed. Hence, the aggrieved accused is before this Court.

4. The case of the accused and the submissions made on his behalf, in brief, are as follows: 'The complainant got himself examined as PW1 and got marked exhibits P1 to P12. The Court below ought to have seen that PW1 was cross examined by the counsel for the accused and subsequently, the matter was posted for further evidence of the complainant and that at that stage the complainant filed the petition to recall PW1 to mark the documents, only to get over the points gained by the accused in the cross examination of PW1, the complainant. The Court below ought to have seen that the accused filed a detailed counter stating that the petition is not maintainable and is liable to be dismissed. The contentions in the said counter were not at all considered, much less in proper perspective. In the cross-examination of PW1, certain questions were posed regarding his capacity to lend, his source of income, the disbursement of amount & genuineness of the transaction, IT returns and bank statement pertaining to the claims in the compliant. There was no mention of the proposed documents in the legal notice, complaint and/or in the evidence affidavit filed by PW1. PW1 came up with the subject petition with requests to recall PW1 and permit to mark the said documents in support of his case only after completion of cross-examination. The said petition was filed with a view to fill up the lacunae and get over the laches. Therefore, the petition is liable to be dismissed and the trial Court ought to have dismissed the petition. The Court below erroneously allowed the said petition and permitted PW1 to adduce further evidence and mark the documents. The Court below came to erroneous conclusion and unjustly allowed PW1 to mark the documents, which were not part of the documents filed with complaint. The Court below failed to appreciate the fact that the complainant had suppressed the facts about the source of income and IT returns at the time of issuing the legal notice and filing of the complaint or even at a later stage, i.e., prior to cross-examination of PW1. The petition was filed at a belated stage with a *mala fide* intention. The

order impugned caused great prejudice and irreparable damage to the defence/case of the accused.'

5. Per contra, the case of the complainant and the submissions made on his behalf, in brief, in brief, are as follows. 'The counsel for the accused cross-examined the complainant, i.e., PW1. He put questions to the complainant in respect of the source of income, income tax returns and bank statements. The complainant could not file the said documents in the above case and that the said documents are very important for adjudication of the case. The complainant has recently received his income tax returns for the financial years 2014-2015 and 2015-2016 along with the letter issued by the chartered accountant and also Karnataka Bank's Statement for the period from 01.04.2015 to 31.03.2017. If PW1 is not recalled for the purpose of marking the above documents on his behalf and is not permitted to exhibit them in the above case, he would suffer irreparable loss and damage. All the relevant documents are already filed and exhibited as P1 to P12. They include cheques, cheque return memos, promissory notes, legal notice and reply notice. One of the defences is that blank signed cheques were given. Thus, the issuance of cheques is not disputed. When it is suggested in cross examination to PW1 that RTGS transaction mentioned in the complaint does not pertain to the subject transaction and that PW1 has no financial capacity, PW1 denied the said suggestions. PW1 was questioned about his income, sources of income, business, income tax returns and bank statement and the documents to show that he had Rs.20,00,000/-. PW1 stated that he received monthly interest upto Rs.1,80,000/-. To winch the truth to the fore and to show that the claim is just and fair and that the claim is supported by public documents and RTGS transaction, it has become necessary to the file the documents. The documents lay bare that the suggestions given to PW in the cross examination are false. The trial Court was of the view that the documents are necessary for arriving at a just decision in the case. Hence, the trial court granted the

requests of the petitioner. The order impugned is a well reasoned order and it does not warrant interference.'

6. At the hearing, learned counsel appearing for the parties reiterated the pleaded cases of the parties.

7. It is apt to refer to the ratio in the decision in Rajaram Prasad Yadav v. State of Bihar[1], wherein the following propositions are postulated:

> "A conspicuous reading of Section 311 Code of Criminal Procedure would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression "any" has been used as a pre-fix to "court", "inquiry", "trial", "other proceeding", "person as a witness", "person in attendance though not summoned as a witness", and "person already examined". By using the said expression "any" as a pre-fix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. Section 138 of the Evidence Act, prescribed the order of examination of a witness in the Court. Order of re-examination is also prescribed calling for such a witness so desired for such re-examination. Therefore, a reading of Section 311 Code of Criminal Procedure and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Code of Criminal Procedure It is, therefore, imperative that the invocation of Section 311 Code of Criminal Procedure and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of

[1] AIR 2013 SC 3081

any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution."

Further, after referring to earlier decisions on the point, the Supreme Court culled out following principles which are to be borne in mind:

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311 Code of Criminal Procedure should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under Section 311 Code of Criminal Procedure should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of Section 311 Code of Criminal Procedure simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Code of Criminal Procedure must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

8. Thus, the power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined is concerned, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. It is needless to state that exercise of such power should be made judiciously and also with extreme care and caution. The Court has to keep in mind not only the aspect of giving a fair opportunity to the complainant but also the need for ensuring that the accused of the crime is not unduly harassed on account of the delay in disposal of the case.

9. Reverting to the core facts of the case, it is to be noted that the accused is facing trial for the offence punishable under Section 138 of the NI Act. His case is that PW1 was cross examined by the learned counsel for the accused and subsequently, the matter was posted for further evidence of the complainant and that at that stage, the complainant filed the petition to recall him to mark the documents and that the said course was adopted by the complainant to get over the laches, fill up the lacunae and over come the points gained in the cross examination and that these documents are not filed with the compliant and that there is no reference to the same in the notice, complaint and evidence (chief) affidavit. Learned counsel for the complainant submits as follows: 'The documents are public documents. The IT returns are given by the Auditor with letter, and, the bank has given the statement. PW1 was asked about these documents. Hence, PW1 fairly filed the said documents, which are public documents, only to assist the Court in arriving at the truth and a just decision in the matter. If the public documents are also permitted to be exhibited, the trial Court will be able to better appreciate the versions of the two sides and find out as to which one of the two versions is correct. Hence, the documents may help the trial Court in arriving at a just decision in the matter. In the cross examination it was elicited that the above documents are not filed. PW1 now fairly filed the said documents also to avoid any comment that these documents are not filed to suppress the truth. If the documents are received on file and are permitted to be exhibited and an opportunity is then given to the accused to further cross examination PW1 and also adduce evidence in rebuttal, no prejudice would be caused to the accused as the accused himself cross examined about the public documents and non filing of the same and as PW1 now filed the documents not only to meet the challenge raised in the cross examination but also to show that his claims and version are true and that of the accused are false and to further avoid any subsequent comments from the accused that the documents are not filed even

after the challenge made in the cross examination of PW1." This Court, on careful consideration, finds acceptable merit in the above said submissions. When the matter is before the trial Court and when the complainant could not earlier file the subject public documents and when the accused in the cross-examination of PW1 challenged the non filing of the documents, like IT returns and bank statement evidencing the RTGS transaction, which was referred to in the case of complainant, the opportunity given to complainant to file the said public documents makes the evidence on record complete in all respects and does not leave anything to assumptions, presumptions and doubts. Further, the said evidence that is permitted by the trial Court to be brought on record and the other evidence that is already brought on record and the further evidence that may be brought on record by both the sides during further trial will certainly be useful and helpful to the trial Court in eventually arriving at a just decision, which is the ultimate objective. When there is some documentary evidence, more particularly, in the nature of public documents it is always in the interests of justice to allow it to be brought on record as such evidence may afford proper support to one of the versions of the two sides and may finally lead the trial Court to a just and correct decision in the case. Documentary evidence, particularly in the form of public documents and in the other form, the authenticity of which cannot be doubted, always affords a better proof of the facts in issue; and the adage 'Men may lie but not matters' supports the above view. In the facts and circumstances of the instant case, the complainant deserves to be given an opportunity to file and exhibit the documents as such a course would facilitate the trial Court in arriving at a just decision in the case and in giving a quietus to the *lis* once and for all, at the first stage itself.

10. Before parting it is apt to mention that the learned counsel for the accused having placed reliance on the decision in Dandy Knit Garments and others V/s Subiksha Spinners (P.) Ltd., [2000 Cri.LJ 624] contended that

defects cannot be allowed to be cured by marking the documents at a belated stage. The facts of reported case disclose that a witness not cited was sought to be examined, that too after the closure of evidence, to fill up the lacunae and hence, permission sought for to examine the witness as an additional was not accorded. The decision in the case turned on its facts and is not helpful to the accused in the present set of facts.

11. On the above analysis, this Court finds that the trial Court is justified in allowing the petition filed by the complainant to recall PW1 for the purpose of marking the documents and that the order impugned does not brook interference.

12. In the result, the Criminal Revision case is dismissed.

Pending miscellaneous petitions, if any, in this Criminal Revision Case shall stand closed.

M. SEETHARAMA MURTI, J

14.07.2017
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