

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.559 OF 2017

ORDER:

This revision is filed under Sections 397 and 401 Cr.P.C. challenging the order, dated 06-02-2017 in CrI.M.P.No.1480 of 2016 in CrI.A.No.143 of 2014 on the file of the Special Judge for Trial of offences under SCs & STs (POA) Act-cum-VI Addl. Metropolitan Sessions Judge, Secunderabad, dismissing the petition filed under Section 391 (1) Cr.P.C. to adduce additional evidence.

2. It is the case of the petitioner-accused that one M.Panduranga Chary is running unauthorized private chits and finance business under the name and style of M/s Santosh Chit Funds at Lalapet. The said Panduranga Chary approached the accused through one Madhusudan and requested him to join as subscriber in the chit. At his request, the accused joined as one of the subscribers and became prized subscriber and received the prize money. At the time of payment of prize money, Panduranga Chary obtained blank signed promotes and cheques drawn on Chartered Bank and SBI, Katedan and Bank of India, RK Puram duly signed by the accused as security at the house of the accused. Subsequently, the accused paid entire amount to Panduranga Chary, but he did not return the five blank promissory notes and seven blank cheques signed by the accused in spite of several request made by him. The said Panduranga Chary colluded with the complainant, hatched a plan to get more money from the accused for their unlawful gain, created the cheques in favour of the complainant and got filed the present complaint before the trial Court.

3. Therefore, the petitioner-accused filed the above petition under Section 391 (1) Cr.P.C. to examine one G.Mohan

Goud and L.Satish, who were allegedly present at the time of taking alleged cheques and demand promissory notes.

4. The trial Court upon hearing the arguments of both counsel, concluded that in the reply notice, there was no reference about the presence of these two witnesses and even the petitioner did not disclose anything about the presence of these two witnesses at the time of handing over the cheques and promissory notes etc., in his examination under Section 313 Cr.P.C. and accordingly, dismissed the petition vide impugned order.

5. Aggrieved by the said order, the present revision is preferred by the petitioner-accused on various grounds.

6. During the course of hearing, Smt.N.Kamala, learned counsel appearing for the petitioner would contend that denial of opportunity to the petitioner is against the principles of natural justice and therefore, an opportunity is to be given to the petitioner to examine those two persons, but the appellate Court did not consider the request in a proper perspective and committed serious error in dismissing the petition.

7. Admittedly, the 1st respondent herein (complainant) filed a private complaint against the petitioner-accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for brevity 'the Act'). During trial, on behalf of the complainant the 1st respondent-K.Vishnu Murthy himself was examined as P.W.1 and Exs.P1 to P17 were got marked. The accused himself was examined as D.W.1 and got marked Exs.D1 to D6.

8. After hearing the arguments of both counsel, the learned XI Special Magistrate, Secunderabad, vide judgment, dated 23-01-2014 in C.C.No.450 of 2013 found the accused

guilty for the offence punishable under Section 138 of the Act and accordingly convicted and sentenced him to undergo Rigorous Imprisonment for a period of six months and also to pay a fine of Rs.5,00,000/- to the complainant within one month from the date of the judgment.

9. Learned counsel appearing for the petitioner-accused contended that there were persons at the time of handing over the documents and they are required to be examined to prove the contention of the petitioner. In fact, the petitioner issued reply notice marked as Ex.P14, dated 21-06-2012, wherein there is no whisper about the presence of those two witnesses proposed to be examined by the petitioner. The accused was examined under Section 313 Cr.P.C. after closure of the prosecution evidence i.e., complainant's evidence. Even in the said examination and also in the evidence of R.W.1, the presence of these witnesses was not disclosed. The petitioner-accused having examined himself as a witness and marked several documents, did not explain the reason in the petition for his failure to examine these two persons before the trial Court.

10. Section 391 (1) Cr.P.C. deals with receiving further evidence or direction to take evidence by the trial Court. While dealing with appeal under Chapter XXIX, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or Magistrate, it or he shall certify such evidence to the appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

11. The main requirement under Section 391 (1) Cr.P.C. is the appellate Court has to satisfy itself that the additional evidence to be necessary for deciding the real controversy. In the present case, the appellate Court has considered the reply

notice marked as Ex.P14, dated 21-06-2012 and the examination of the petitioner under Section 313 Cr.P.C. and his examination as R.W.1 and found that there was no reference about the presence of these two witnesses proposed to be examined and therefore, it is an after thought and declined to grant permission to examine those two witnesses. Therefore, there was no reference in the notice about their presence at the time of alleged handing over of cheques and promissory notes etc., to the said Panduranga Chary. Even the examination of the petitioner under Section 313 Cr.P.C. did not disclose the said fact. It is an attempt made by the petitioner to protract the proceedings for some time and the case of adducing additional evidence is an after thought. When the appellate Court found that the evidence of proposed witnesses is not necessary, question of interference of this Court by exercising jurisdiction under Section 397 Cr.P.C. which is limited does not arise in the fact situation. Therefore, I find no grounds in the revision to interfere with order passed by the appellate Court and hence, this revision is devoid of merits and is liable to be dismissed.

12. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any pending, in this revision shall stand closed.

DATED: 02-08-2017.
Hsd

M.SATYANARAYANA MURTHY, J