

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case Nos.1534, 1412 & 1396 of 2017

COMMON ORDER:

These three Criminal Revision Cases, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, (for short, 'the Code') by the unsuccessful petitioner/ accused are directed against the common orders, dated 04.05.2017, of the learned Judicial First Class Magistrate, Special Mobile Court, at Nalgonda, passed in CrI.M.P.Nos.227, 228 & 866 of 2017 in C.C.No.329 of 2012.

2. I have heard the submissions of *Sri P.S.P.Suresh Kumar*, learned counsel appearing for the petitioner/ accused, and of *Sri Vishnuvardhan Reddy*, learned counsel appearing for the 1st respondent/complainant. I have also heard the submissions of the learned Additional Public Prosecutor 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 accused is facing trial in the subject calendar case for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. At the stage of arguments, the complainant filed the aforesaid petitions to reopen the evidence, receive documents and recall him (PW1) for further examination and for marking the subject documents, mentioned in the application.

4. The case of the complainant in support of the said requests, in brief, is as follows: 'During his examination earlier as PW1, the complainant could not file the certified copy of legal notice, dated 02.06.2012, postal receipt, acknowledgement card, reply notices, dated 05.06.2012 and 07.06.2012 and statement of Bank account as the said documents were filed in another matter and certified copies of the same could not be obtained by that time. Later, the complainant obtained certified copies of the aforesaid documents. Filing

and exhibiting of the said documents in the evidence of PW1 by recalling him is essential to prove the case of the complainant. Hence, he is obliged to file the subject applications.

5. The case of the accused, in brief, is this:

The petitions are not maintainable. The documents are not related to the present case. The present case is a calendar case and not a civil case. The complainant earlier filed a petition requesting for comparison of signatures without producing any documents. Subsequently, the present three applications are filed to delay the proceedings. No reasons are assigned for not filing the documents earlier. No explanation was offered for belated filing of the documents. The documents are no way helpful to the case of the complainant. The petitions are intended to fill up the lacunae in the evidence after PW1 was cross examined. No cogent and valid reasons are assigned for reopening the evidence, receiving documents and recalling PW1 for further examination.

6. By the common orders impugned in these revisions, the learned Magistrate allowed the petitions filed by the complainant. Hence, the aggrieved accused is before this Court.

7. Learned counsel appearing for the accused while reiterating the case of the accused would submit as follows: 'The documents are not filed at the earliest opportunity. The subject petitions are filed by the complainant when the CC is at the stage of arguments. No reasonable explanation is assigned for not filing the documents earlier or for the delay in filing the documents. Vague and casual allegations are made in support of the requests of the petitioner/ complainant. The CC is of the year 2012. According permission to file the documents after recalling PW1 at the fag end of the case is impermissible. Such a course causes great prejudice to the defence of the

accused. However, without adverting to the facts peculiar to the case, the trial Court simply allowed the petitions.’

8. Per contra, learned counsel for the complainant while supporting the orders of the Court below would submit that the documents are only notices exchanged and copy of an account obtained from a Bank and that therefore, no prejudice would be caused if the documents are permitted to be filed by re-opening the evidence and recalling PW1.

9. I have given earnest consideration to the facts and submissions.

10. The trial Court while considering the facts and submissions rightly noted that the documents being sought to be filed by seeking to recall PW1 are certified copies of legal notice, postal acknowledgements, reply notices besides statement of account. In view of the nature of the documents, the genuineness of the documents cannot be disputed. The documents are admittedly filed in a connected civil proceeding. Since the originals are filed in a civil proceeding and certified copies were not available with PW1, he could not file the same earlier. He having filed the certified copies of the subject documents sought permission to reopen the evidence and recall him to give further evidence. The trial Court also observed that relevancy of the documents would be considered at the appropriate stage and not at the stage when the Court is considering the request to grant leave to file the documents. According to the view of the trial Court, the documents are essential to arrive at a just decision in the matter.

11. Having regard to the facts and submissions and the discussion supra, 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

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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 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.

12. Thus, a plain consideration of the provision and the legal position obtaining would reflect that 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.

13. 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. As already noted, considering the nature of the documents, the genuineness of the documents cannot be disputed and granting permission to file the subject documents would sub-serve the ends of justice and afford a fair and reasonable opportunity to the complainant to establish his case. Further, the certified copies of the documents, if permitted to be filed would be helpful to the trial Court in arriving at a just decision in the matter. When there is some documentary evidence, more particularly, in the nature of undisputed

documents, it is always in the interests of justice to allow the same 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 indisputable documents, 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.

14. On the above analysis, this Court finds that the trial Court is justified in allowing the petitions filed by the complainant and hence, the common order impugned in these revisions does not brook interference.

15. In the result, the Criminal Revision cases are dismissed.

Pending miscellaneous petitions, if any, in these Criminal Revision Cases shall stand closed.

11.08.2017
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M. SEETHARAMA MURTI, J