

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NOs.2154 and 2158 OF 2017

COMMON ORDER:

These Criminal Revision Cases are filed under Sections 397 & 401 of Cr.P.C questioning the propriety, legality and regularity of the order dated 12.07.2017 passed by the XXIII Special Magistrate, Hyderabad in CrI.M.P. Nos.1919 and 1920 of 2017 in C.C. Nos.147 and 153 of 2016 respectively, in allowing the applications filed under Section 254 Cr.P.C., for receiving authorisation letter, passed in Board Resolution dated 31.03.2016 filed by the petitioner company therein subject to payment of costs of Rs.500/- to the respondent therein.

The respondent—Shri Laxmi Ganapathi India Private Limited herein authorised the Manager of the Company through authorisation letter passed by the Board dated 31.03.2016 under Section 244 Cr.P.C to file the complaint and the learned Judicial Magistrate made certain observations in para No.11 of the order that the complainant not filed the said authorisation letter dated 03.05.2014 but filed a new authorisation letter dated 31.03.2016. The said document i.e., authorisation letter dated 31.03.2016 is not at all referred in the complaint, sworn statement and chief affidavit of PW.1. Further, in para No.14 of the order, it was observed that latches on the part of the complainant can be compensated in terms of money, while disbelieving the reasons mentioned for not filing the document i.e., authorisation letter.

The present revisions are filed on the ground that the Court below recorded such adverse remarks against respondent herein in

para Nos.11 and 13 that the Court below is not expected to receive the document by exercising the power under Section 244 Cr.P.C and the observations at Para Nos.14 to 17 of the order are contrary to the observations made in para Nos.11 and 13 of the order and hence prayed to set-aside the same.

Learned counsel for the petitioner reiterated the contentions raised in the grounds of revisions mainly on the ground that in view of the judgment of the Apex Court in *A.C.Narayanan vs State of Maharashtra & another*¹ wherein it was held that there shall be specific assertion as to the knowledge of the power of attorney holder in the said transaction explicitly in the complaint and the power of attorney holder who has no knowledge regarding the transaction, cannot be examined as a witness in the case. When the authorisation was not filed earlier and no reasons are assigned for failure of filing such document along with compliant and in the absence of any assertion about the personal knowledge of the fact, the document cannot be received by exercising the power under Section 254 (1) of Cr.P.C.

Admittedly, the respondent filed private complaint under Section 200 Cr.P.C against the petitioner for the offence punishable under Section 138 of Negotiable Instruments Act (for short 'N.I. Act') and the petitioner being a company cannot be treated as a person in its capacity being juristic person, but it must be represented by Managing Director or any other competent person authorised by the Board of Directors in its resolution.

¹ (2014) 11 SCC 790

The respondent did not file such authorisation letter along with complaint and did not explain the reason why the same could not be filed earlier but filed before the Court along with an application under Section 254 Cr.P.C. Further, Section 254 Cr.P.C is applicable to the present facts of the case since the offence punishable under Section 138 of N.I Act is a summons case.

Section 244 Cr.P.C, permits examination of the witnesses not mentioned in the list of witnesses and receiving of any document in warrant cases but in summons case Section 254 Cr.P.C is relevant provision in Cr.P.C.

When a document is produced before the Court, the Magistrate shall proceed and take all such documents as may be produced by the prosecution.

Here the complainant does not mean the examination of complainant on oral hearing, though the prosecution has discretion to proceed further in the matter with reference to examination of the material witnesses and independent witness to the occurrence to unfold prosecution story and which may give sufficient evidence before the Court for issuing summons and proceed further. The Court had an occasion to deal with similar issue in warrant case with reference to Section 244 Cr.P.C in *Jamuna Rani vs S.Krishna Kumar*², held that the Court has got ample power, before the order of discharge is passed, to entertain the application of the complainant with regard to the examination of the witnesses sought to be examined in support of the charge.

² 1003 CrLJ 1405

Not only the persons listed in the complaint but also any other person who has got knowledge or who has got something to say about the complaint alleged therein, can be examined if such an application is made by the complainant before the order of discharge is passed. So, the Magistrate at the earliest point of time has no discretion to dismiss the application to examine some more witnesses other than the persons mentioned in the list.

Section 244 Cr.P.C is impari material to Section 254 Cr.P.C but the difference is procedure. Later is applicable to summons procedure, former is applicable to warrant procedure. The evidence includes documentary. When witnesses are permitted to be examined, why documents cannot be received is a question. In fact, there is no fetter on the powers of the Magistrate as to receive documents. In the absence of any interdict on the power of Magistrate, receiving document is not an illegality.

Therefore, the Court can receive evidence whatever produced before it by the prosecution at the time of appearance of the accused before the Court, while affording an opportunity of hearing.

In view of the terminology used in the Section, specific words used all as may be produced means it is incompetent for the Magistrate to take a particular document and he should accept entire evidence which were produced by the prosecution. Where the Magistrate refuses to entertain evidence of the prosecution for examination of particular witness or to receive documents, it must record reasons for refusing to take documents and the entire

evidence refused to adduce may not vitiate the trial, but it is a serious latches on the part of the said Magistrate. Therefore, when Section 244 Cr.P.C permits the Court to receive the evidence produced by the prosecution at the time of examination, the Court cannot refuse without recording any reasons.

In the preset case, the Magistrate recorded his reasons however disbelieving the reasons assigned by the respondent, the Court below allowed the applications filed for receiving the document as evidence. Therefore, the order does not suffer any legal infirmity warranting interference, exercising the power under Sections 397 and 401 Cr.P.C, the revisions are dismissed. However, liberty is given to challenge the authorisation during trial.

In the result, the Criminal Revision Cases are dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:09.08.2017
Knl