



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 31.10.2018
CORAM
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

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Crl.O.P.No.25848 of 2018
and Crl.M.P.No.14828 of 2018

Bharat Kumar

.. Petitioner

Vs

1.Rajender Singh
2.Prabhu
3.Anuj

4.Inspector of Police,
C-1, Flower Bazar Police Station,
Flower Bazar,
Chennai-600 001.

.. Respondents

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order dated 10.09.2018 passed in the memo filed in C.A.No.288 of 2017 and direct the XV Additional City Civil Court, Chennai to take up the Crl.M.P.63 of 2018 separately.

For Petitioner : Mr.Niranjana Rajagopalan
for Ms.V.Ranjitha

For 4th Respondent: Mrs.M.Prabhavathi, APP

O R D E R

On the complaint lodged by Bharatkumar, the respondent Police registered a case in Crime No.38 of 2016 and after completing the investigation, filed a Charge Sheet in C.C.No.513 of 2017 before the VIII Metropolitan Magistrate for the offences under Section 294(b), 323, 427 and 506(i) IPC against Rajendra Singh and two others. After a full fledged trial, the accused were acquitted in C.C.No.513 of 2017 on 01.07.2017. The petitioner being the de facto complainant has filed an appeal against the acquittal under Proviso to Section 372 Cr.P.C. in C.A.No.288 of 2017 and the same is now pending before the XV Additional Sessions Judge, City Civil Court, Chennai. During the pendency of the appeal, the respondent/de facto complainant filed Crl.M.P.No.63 of 2018 under Section 391 Cr.P.C. for additional evidence. The accused filed their counter in Crl.M.P.No.63 of 2018 and thereafter, the accused filed a memo before the appellate Judge praying that the Interlocutory Application in Crl.M.P.No.63 of 2018 may be heard along with main appeal in C.A.No.288 of 2017. On the said memo, the



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learned XV Additional Sessions Judge, City Civil Court has passed the impugned order on 10.09.2018 directing that CrI.M.P.No.63 of 2018 and C.A.No.288 of 2017 can be heard together. Aggrieved by that order, the petitioner/de facto complainant is before this Court.

2.Heard Mr.Niranjan Rajagopalan, learned counsel for the petitioner.

3.In the opinion of this Court, there is absolutely no infirmity in the order passed by the appellate Judge, because no party can compel the appellate Judge to exercise power under Section 391 Cr.P.C. as a condition precedent to hearing the main appeal. Adducing additional evidence in a case is a decision that has to be taken by the appellate Judge, during the course of arguments in an appeal and such a decision can be taken even without any party filing an application, because the power of the Court to take additional evidence is not contingent on an application being made by a party. The language under Section 391 Cr.P.C. also does not contemplate such a dichotomy.

In the result, this petition is devoid of merits and is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.XV Additional Sessions Judge,
City Civil Court.
- 2.Inspector of Police,
C-1, Flower Bazar Police Station,
Flower Bazar,
Chennai-600 001.
- 3.The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.25848 of 2018

KS(CO)
RRS 26/11/2018