THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Crl.R.C.Nos.3118, 3119 and 3120 of 2015

COMMON ORDER:

Criminal Revision Case Nos.3118, 3119 and 3120 of 2015 are filed by the petitioner herein/accused aggrieved by the common order dated 07.12.2015 in Crl.M.P.Nos.2872, 2873 and 2874 of 2015 in C.C.No.408 of 2012 passed by the X Special Magistrate, Hyderabad, allowing the petitions filed by the R.1 herein/complainant seeking to reopen, recall PW.1 and to receive documents of Income Tax Returns.

2) Heard arguments of Sri A. Laxminarayana, learned counsel for petitioner; learned Additional Public Prosecutor for the State (Telangana) and Sri Shyam S. Agarwal, learned counsel for 1st respondent.

3) The factual matrix of the case is thus:

a) C.C.No.408 of 2012 is filed by the 1st respondent/complainant against the petitioner/accused for the offence under Section 138 of N.I Act on the allegation that the complaint lent Rs.1 Crore to the accused and he executed a pronote and in discharge of the said pronote debt, he issued a cheque bearing No.664439 dated 16.04.2012 drawn on HDFC Bank Limited, Sanjeevareddy Nagar Branch, Hyderabad, which on presentation was bounced back twice and after following the due procedure contemplated under Section 138 of N.I Act, the complainant filed the private complaint. While-so, after completion of the evidence on behalf of the complainant and when the evidence on behalf of the accused was on the way, the complainant filed the aforesaid three petitions seeking to reopen and recall PW.1 for the purpose of marking his I.T returns to show his capacity to lend the amount of Rs.1 Crore, which is under dispute. The petitions were allowed by the Trial Court.

4) In view of the fact that the orders impugned are interlocutory in nature and a bar in the form of Section 397 (2) Cr.P.C is engrafted curtailing powers of the revision in relation to interlocutory orders passed in any appeal, enquiry, trial or other proceedings, this Court heard both the learned counsel on the maintainability of the revisions.

5) Learned counsel for petitioner sought to argue that on merits the petitions ought to have been dismissed by the Trial Court since they are not only belated petitions filed at the fag-end of the evidence of accused, but also intended to plug in the loopholes in the case of the complainant. Learned counsel further argued that when the alleged Income Tax Returns were held up with the Auditor of the complainant, there was no reason why they were not filed at the relevant time i.e, during the course of evidence of the complainant. Sofaras the maintainability of revisions is concerned, learned counsel argued that the orders though interlocutory in nature, however, they effect the main proceedings. He placed reliance on the decision reported in ***Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke and others***[1] and thus prayed to allow the revisions.

6) Per contra, learned counsel for 1st respondent while supporting the orders impugned submitted that the Trial Court in order to give fair

[1] (2015) 3 SCC 123

chance to the complainant to establish his case, allowed the petitions and there was no illegality or perversity involved in the orders impugned and therefore, the revisions are not maintainable on merits. Sofaras the maintainability of the revisions is concerned, he would argue that the orders impugned are purely interlocutory in nature and on the other hand they are not "intermediary" so as to finally terminate the proceedings. He would thus submit that the bar under Section 397 (2) Cr.P.C would squarely apply to the orders impugned and therefore, the revisions are not maintainable. He relied upon the decision reported in ***Girish Kumar Suneja v. C.B.I***[2].

7) In the light of above rival arguments, the point for consideration is:

"Whether the Crl.R.Cs are maintainable?"

8) **POINT**: There can be no demur that the impugned orders are purely interlocutory in nature as they are filed to reopen the matter, recall PW.1 and to accept certain documents on behalf of the complainant. Those orders will not terminate the proceedings finally. In ***Girish Kumar Suneja***'s case (2 supra), Hon'ble Apex Court referring various decisions including the decision in ***Madhu Limaye v. State of Maharashtra***[3], observed that an intermediary order is one which is interlocutory in nature but when reversed, it has the effect of terminating the proceedings and thereby resulting in a final order. There are two such intermediate orders—an order taking cognizance of an offence and summoning an accused and an order for framing charges. *Prima facie*, those orders are

[2] (2017) 14 SCC 809
[3] (1977) 4 SCC 551

interlocutory in nature, but when an order taking cognizance and summoning an accused is reversed, it has the effect of terminating the proceedings against that person resulting in a final order in his favour. Similarly, an order for framing of charges if reversed has the effect of discharging the accused person and resulting in a final order in his favour. Therefore, the Apex Court observed, the intermediate order is one, which, if passed in a certain way, the proceedings would terminate but if passed in another way, the proceedings would continue. The Apex Court further observed that the High Court can accept the revision only against the final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings. Applying the above ratio to the case on hand, as rightly argued, the impugned order can by no means stated to be final order or intermediate orders as those orders are not going to finally terminate the proceedings in one way or the other. In that view of the matter, it must be said, the revisions are not maintainable as against those orders. The decision in ***Sanjaysinh Ramrao Chavan***'s case (1 supra) cited by learned counsel for petitioner is of no avail to him.

9) In the result, all the three Criminal Revision Cases are dismissed.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 19.11.2018
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