

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**Criminal Revision Case No.2871 of 2018**

**ORDER :**

The revision petitioner is the 3<sup>rd</sup> accused in CC.No.33 of 2011 on the file of the X Special Magistrate, Erramanzil, Hyderabad, renumbered from old CC.No.450/2010, on the file of XIV Addl.Chief Metropolitan Magistrate, Hyderabad, that was maintained for the offence under Section 138 of Negotiable Instruments Act by M/s.Nagarjuna Constructions Company Limited, represented by Assistant Manager (Legal), against five accused, including A1 entity M/s. Naftogaz India Private Limited represented by its Managing Director Mahdoom Bava Banrudeen Noorul Ameen and the said Ameen as A2, the petitioner Mohd.Naim Khan (A3), one Mr.Kishore Praharaj and one Pankaj Gupta (A5). The trial Court convicted the accused 1 to 5 and they maintained individual appeals aggrieved thereby. So far as the petitioner/A3 concerned, he maintained CrI.A.No.139 of 2014 on the file of the I Addl.Metropolitan Sessions Judge, Hyderabad. There was a reversal judgment setting aside the trial Court's conviction judgment and aggrieved thereby, complainant filed appeal.No.778 of 2016 (subject to correction of the number) against the respective accused. Complainant filed other individual appeals. Another bench of this court by common judgment dated 19.04.2017 disposed of as many as twelve (12) appeals, including the appeals relating to Calendar Case No.33 of 2011 supra of 4 or 5 by remanding the matters to the lower appellate Court for fresh decision on facts of each case being conscious of but for the judicial precedents, there is no provision for remand. It has also directed for early disposal.

2. The Criminal Appeal No.139 of 2014 concerned now was along with other appeals restored to the file of learned I Addl.Metropolitan Sessions Judge for hearing and disposal. While it was pending, the petitioner/A3 of the remanded appeal supra filed application under Section 391 Cr.P.C. in CrI.M.P.No.1431 of 2018 and the learned I Addl. Metropolitan Sessions Judge, Hyderabad, dismissed the application on 24.09.2018 after counter of the complainant/respondent and also from the additional evidence application running in four (4) pages with eleven (11) documents enclosed, from its perusal in saying the accused no.3/petitioner did not file any such documents before the lower Court during trial and did not mention any reason for non-filing earlier before trial Court much less in the earlier round of hearing the appeal and the appeal is after remand by common judgment of the High Court dated 19.04.2018 coming for arguments and at this stage as contended by complainant, only on 28.08.2018, after lapse of four months or more of the remand order, came with the petition and there are no grounds to consider the petition.

3. A perusal of the impugned order neither mentions whether the documents are relevant or not nor the counter listed at para 2 contains any mention as to relevant or not which is a crucial for exercise of the power under Section 391 Cr.P.C. which speaks ***“in dealing with an appeal, the Appellate Court 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 Magistrate or when the Appellate Court is a High Court, by a Court of Session or a Magistrate ... ....”***

4. What is the pre-requisite to maintain an application by showing from there and also for the Court if at all to allow is giving reasons mandatory that too by showing such additional evidence is necessary for just decision of the case and not as a matter of course that too in the appeal.

5. Impugning the dismissal order, not covering any aspect but for mentioning as delayed tactics, the present revision is filed before the Court and another bench of this Court after hearing, passed order dated 30.10.2018 by referring to the grounds of revision and the contentions and order of the lower Court and remand order of this Court from which the appeal restored wherein the additional evidence application filed four months of remand order as referred supra, particularly at para 10, observed as follows:-

***“ Since the case is coming up for arguments before the lower Appellate Court, this is not a fit case where the petition for setting aside orders passed by the trial Court by permitting the petitioner to file a petition for additional evidence in this case. If the petitioner intends to file any such documents to be considered by the trial Court, he may file the same along with his written arguments by submitting a copy of the same to the opposite counsel and may advance arguments before the trial Court.***

***It is made clear that the petitioner is directed to file his written arguments making all the submissions in respect of the documents that he intends to rely on. On considering the written arguments of both parties, the trial Court may dispose of the matter in accordance with law.”***

6. The said order is impugned by filing “for being mentioned” petition by complainant/respondent to the revision supra and the self same single Judge of this Court on 23.11.2018 in the ‘for being mentioned’ petition in I.A.2 of 2018, ordered as follows:-

***“This application is filed seeking to post Crl.R.C.No.2871 of 2018 under the caption “For being mentioned” for correcting the inadvertent error while transcribing the order dated 30.10.2018 by removing the direction/permission to file documents along with the written arguments while keeping the direction to file the written arguments simplicitor.***

***Heard learned counsel for the respective parties.***

***Having regard to the facts and circumstances of the case, the order dated 30.10.2018 passed by this Court in Crl.R.C.No.2871 of 2018 is recalled.***

***Accordingly, the application is ordered. Post the revision for hearing on 28.11.2018.”***

7. Practically, the learned Single Judge of this Court recalled the order on the ‘for being mentioned’ application in toto instead of clarifying in the ‘for being mentioned’ petition.

8. It is thereby the revision is required to be heard denovo and came before me today.

9. Perused the entire material and connected papers and heard both sides.

10. As referred supra, the pre-requisite for invoking Section 391 Cr.P.C. is necessitated of the documents on behalf of the petitioner /appellant or respondent as the case may be for just decision of the case. Now, whether any such foundation laid, leave about latches to compensate otherwise concerned, that the application to receive

additional documents belatedly as referred supra, the list is appended mentioning 11 documents. In none of the documents, it is not his case that any of those documents are pertaining to him directly. There is no proper explanation in the petition running in four pages with nine paras to receive the additional evidence as to why the documents earlier not filed if at all available. In the petition averments it is reproduced about the legal position in question a vicarious liability is not automatically without any specific averments. If at all that is the contention, it is a legal position that can be raised in appeal itself. For that in the absence of showing any of the eleven documents are relating referring to the expression of the Apex court in **National Small Industries Corp. Ltd. Vs. Harmeet Singh Paintal and another**<sup>1</sup>, there is no necessity to receive the additional evidence documents and even coming to the scope referred from the expressions of this Court in **N.Somi Reddy & another Vs.State of A.P. and others**<sup>2</sup> and Apex Court in **Zahira Habibulla H.Sheikh v.State of Gujarat**<sup>3</sup> are not in dispute as very section itself speaks the pre-requisite for sustaining the application to receive additional evidence and laying of foundation as it is lacking, the revision is dismissed for no grounds to receive the additional evidence. The lower Appellate Court shall dispose of the appeal as early as possible pursuant to the earlier issued directions.

11. Miscellaneous petitions if any, pending, in this revision, shall stand closed.

**Dr. B. SIVA SANKARA RAO, J**

**Date: 26.03.2019**

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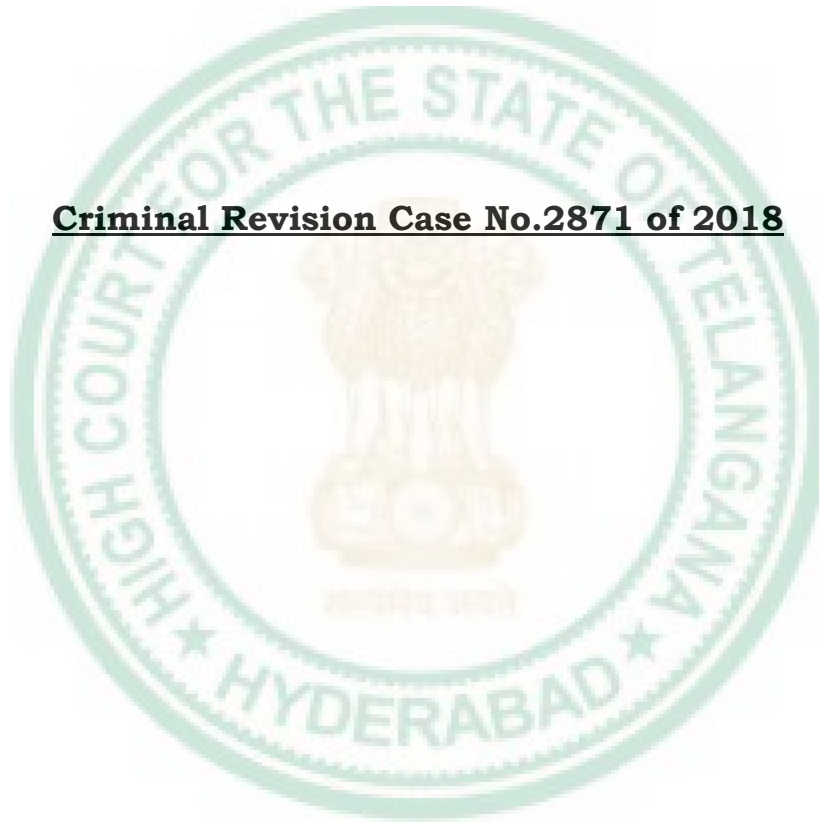
<sup>1</sup> 2010 CRL.L.J.1907

<sup>2</sup> 2005 (2) ALD (Cri) 406

<sup>3</sup> 2004 Cri LJ 2050

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26<sup>th</sup> March, 2019

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