

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2019

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRIMINAL APPEAL NO.592 OF 2011

G.Andiappan,
S/o.Ganapathy,
No.116/1, E.H.Road, Sharma Nagar,
Vyasarpadi, Chennai-39. ... Appellant/Complainant

/versus/

M.Kasthuri,
W/o.Manoharan,
No.2/76, Ameer John Street,
Choolaimedu, Chennai-600 094. ... Respondent/Accused

Prayer:-

Criminal Appeal is filed under Section 341 read with 482 of Criminal Procedure Code, praying against to call for the records in Crl.M.P.No.4714 of 2011 in A.S.No.460 of 2010 on the file of Learned VI Additional Judge, City Civil Court, Chennai and set aside the impugned order dated 21.04.2011 passed in Crl.M.P.No.4714 of 2011 in A.S.No.460 of 2010 and make a complaint which such former Court viz., VI Additional City and Civil Judge, Chennai might have made under Section 340 and to proceed in accordance with the procedure by law.

For Appellant : Mr.T.Jaishankar

For Respondent : Mr.T.Velumani

J U D G M E N T

Heard the learned counsel for the appellant.

2. The petitioner herein aggrieved by the dismissal of his petition filed under Section 340 of Cr.P.C to initiate action against the respondent for offence under Section 195 of Cr.P.C has preferred this appeal.

3. The contention of the learned counsel for the petitioner herein is that after hearing the counsel, the Court has accepted the maintainability of the application but has dismissed the

application to initiate action under Section 195 of Cr.P.C without affording him an opportunity. In support of his submission, the learned counsel read over Section 340 of Cr.P.C and tried to convince this Court that once the application is maintainable, the Lower Court cannot dismiss the application, without a full-fledged enquiry. In fact, reading of Section 340 of Cr.P.C, does not indicate such a mandatory requirement. Only if the Court is of the opinion that it is expedient in the interest of justice that an enquiry should be made into any offence under Section 195 (1)(b) of Cr.P.C which appears to have committed, it is bound to conduct enquiry and not otherwise. In this case, the impugned order clearly indicates that the respondent herein along with the written statement has submitted four documents but were not marked during the course of trial. The learned Judge having perused the records of the Lower Court had come to the conclusion that in his opinion, it is not necessary to enquire about the allegation made by the petitioner herein. Hence, this Court is convinced that there is no error in the order of the Court below.

4. The learned counsel appearing for the appellant would submit that once an appeal under Section 341 of Cr.P.C is admitted by the High Court, the Court cannot dismiss the petition. Referring the judgment *Koduru Janardana Rao Vs. Prattiapati Lakshmi Narasamma* reported in 1934 AIR Madras 52 (which deals with Section 476-B of the old and repealed Criminal Procedure Code 1898) the learned counsel contents that the matter has to be remanded back to the Lower Court and should not be dismissed. The Counsel contents that the said judgment has held that the Appellate Court has no power to dismiss the appeal under Section 341 of Cr.P.C but can only remand the matter whenever the appeal is preferred against the dismissal of petition filed under Section 340 of Cr.P.C.

5. In the above said judgment the Full bench of this Court was called upon to decide whether in an appeal under Section 476-B of Cr.P.C 1898, in a civil proceedings has the Appellate Court power to remand the matter back to the Lower Court for disposal?

6. The Full Bench referring the provisions of Criminal Procedure Code 1898 and after considering the earlier judgment on this issue, answered in affirmative. The law laid has no relevancy to the facts of this case and the grounds on which the present revision petition is filed.

7. The Revision Petitioner contents that his application filed u/s. 340 of Cr.P.C ought not to have been dismissed without enquiry. The impugned order, disclosed that the Court

below after considering the plea and records has satisfied that enquiry is not required. After considering the locus standi of the revision petitioner, who is a third party to the suit initiating action under Section 195 r/w 340 of Cr.P.C, the Court below has held that the averments of the petitioner is contrary to the records. It has given a positive finding that the additional documents sought to be marked in the course of the appeal were already filed before the trial Court along with list of documents but omitted to be marked during the course of trial. When his application was found to be contrary to the records, the Court below has rightly dismissed his application since it was not a fit matter for enquiry. The revision petition is not only baseless. The submissions made by the counsel and the judgment cited by him are to the say the least is totally irrelevant.

8. In the result, the Criminal Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Learned VI Additional,
City Civil Judge, Chennai.
2. The Section Officer,
Criminal Section(Records),
High Court, Madras.

+2cc to Mr.T.Jaishankar, Advocate, S.R.No.13275

Criminal Appeal No. 592 of 2011

SSI (CO)
NR/28/03/2019