

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.4659 & 4666 of 2019 and
Crl.M.P.Nos.2760 & 2764 of 2019

1.Duraisamy ...Petitioner in Crl.O.P.4659/2019

1.Sellammal
2.Muthusamy ...Petitioners in Crl.O.P.4666/2019

-Vs-

State; represented by:
The Inspector of Police,
DCB Police,
Namakkal.

....Respondent
[In both the Crl.O.Ps]

Common Prayer:

Criminal Original Petitions filed under Section 482 of Criminal Procedure Code, to set aside the order in Crl.M.P.No.418 in C.A.No.24 of 2018 and Crl.M.P.No.419 in C.A.No.25 of 2018 , dated 27.12.2018 on the file of the Sessions Judge, [Fast Track Mahila Court], Namakkal.

For Petitioners : Mr.B.Kumar, Senior Counsel
[in Crl.O.P.4659/2019] For R.Siddharth

For Petitioners : Mr.B.Kumar, Senior Counsel
[in Crl.O.P.4666/2019] For S.Ramachandran

For Respondent : Mr.M.Mohamed Riyaz
[in both petitions] Additional Public Prosecutor

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COMMON ORDER

Both the Criminal Original Petitions have been directed as against the order in Crl.M.P.No.418 in C.A.No.24 of 2018 and Crl.M.P.No.419 in C.A.No.25 of 2018, dated 27.12.2018 passed by the learned Sessions Judge, [Fast Track Mahila Court], Namakkal, thereby dismissing the application filed under Section 391

Cr.P.C., to adduce additional evidence.

2. Mr.B.Kumar, learned Senior Counsel appearing for the petitioner would submit that the Lower Appellate Court dismissing the application on the sole ground that 8 years have been passed since the case was taken on file, when the fact remains, that it is not the petitioner which caused the delay in concluding trial. The petitioners were charged for the offences under Sections 420 and 120B IPC and they were found guilty and awarded punishment for one year simple imprisonment with fine of Rs.2,500/-, in default, awarded punishment for the period of four weeks additional simple imprisonment by the Trial Court. The Trial Court erroneously assumed that the first and third accused have adopted the written statement filed by the deceased Mahendran, and as such, it is very much necessary to adduce additional evidence on behalf of the petitioners before the Trial Court. If the petitioners are permitted to adduce additional evidence there would not be any prejudice to be caused to the respondent. Therefore, the petitioners prayed for allowing this petition.

3. Per Contra, the learned Public Prosecutor would submit that there are four accused in which the petitioners are arrayed as A1 to A3 for the offences under Sections 420 and 120B IPC, sentenced to them to undergo one year simple imprisonment with fine of Rs.2,500/- in default, awarded punishment for the period of four weeks additional simple imprisonment by the Trial Court. As against which the present petitioners have preferred an appeal in C.A.Nos.24 & 25 of 2018. During the pendency of the appeals, the petitioners filed an application under Section 391 CrPC., seeking permission to adduce additional evidence. The First Appellate Court has rightly dismissed the above said petition for the reason that the case was taken on 15.11.2010 and after taking the case on file the petitioners took to complete the trial 8 years and now the appellants seeking permission to adduce additional evidence and the same was dismissed by the Court of Sessions (Fast Track Mahila) Judge, Namakkal, by an order dated 27.12.2018. That apart, the impugned order does not warrant any interference by this Court and prayed for dismissal of the petition.

4. Heard Mr.B.Kumar, learned counsel appearing for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor for the respondent and perused all the materials available on record.

5. The petitioners are arrayed as A1 to A3 and they were convicted for the offences under Sections 420 and 120B IPC and sentenced them to undergo imprisonment of one year simple imprisonment with fine of Rs.2,500/- in default, awarded

punishment for the period of four weeks additional simple imprisonment by the Trial Court. It is seen that the A1-Chellammal, is the Power of Attorney of one deceased Mahendran executed an agreement for sale in favour of the defacto complainant-PW1. Notwithstanding that it is seen the above agreement was in force the first accused had executed sale deed in favour of A3-Duraisamy. Further, a suit was initiated by the defacto complainant-PW1 in O.S.No.149 of 2011 on the file of the Sub Court, Namakkal, for specific performance against the Accused Nos. 1 and 3 and one Rajendran. The written statement filed by the first accused and the petitioners separately. But the petitioners have no knowledge about the averments made in the written statements filed by the first accused, as if, they adopted the written statement filed by the deceased Mahendran. Though the learned counsel for the appellant made such an endorsement, it is not binding on the A3-Duraisamy, since the petitioners never signed in the memo adopting for the written statement filed by other defendant. This aspect was not properly brought to the notice of the Trial Court. Therefore, the petitioners have filed a petition under Section 391 CrPC., to adduce additional evidence and mark the written statement of A1 and A3 as additional evidence.

6. In this regard, the learned senior counsel has relied upon the decision of the Hon'ble Supreme Court in Brig. Sukhjeet Singh (Retd.) MVC v. State of Uttar Pradesh and Ors, reported in 2019 SCC OnLine SC 72. In paragraph 19 to 21 of the said judgment, it has been observed as follows:

19. Both the above reasons given by the High Court and relied by the High Court in rejecting the application filed under Section 482 are unfounded. The first observation of the High Court is that filing of additional evidence at such a belated stage. In the facts of the present case we do not approve the above observation. When the Appellate Court has been given power to lead additional evidence, the observation that it is belated stage was uncalled for. The Appellant was convicted on 07.10.2013 and appeal was immediately filed on the next date, i.e., 08.10.2013. It was not even mentioned by the High Court that there is anything on record to indicate that appeal was being heard and at this stage the application under Section 391 Cr.P.C., was filed, calling the application as filed at belated stage itself was unjustified. Further, the observation of the High Court that application was filed with some ulterior malafide motive also does not commend us. The

appellant had already been convicted by the trial court, the charge was cheating the complainant with regard to sale of agricultural land of the trust. The second Trust Deed dated 18.10.1989, which was on record and referred to by the trial court and was refused to look into on the ground that it was not proved by the appellant. Filing of the application before the High Court to accept the certified copy of the Trust Deed and the Resolution and permit the appellant to lead evidence can in no manner, be said to be malafide motive of the accused, who had been convicted in the appeal, has right to take all the grounds and also lead additional evidence, which in accordance with the Appellate Court is necessary in deciding the appeal. As noted above, this Court has laid down that when it becomes necessary to take additional evidence, cannot be enlisted or enumerated in any fixed formula. It depends on facts of each and every case to come to a conclusion as to whether it is necessary to take additional evidence or not. Present is a case where it was due to lapse on the part of the appellant and his counsel that the second Trust Deed, which was basis for taking steps for sale of the land could not be proved.

20. The second observation of the High Court is that the application to take additional evidence at the appellate stage is filed by appellant for delaying the decision of the appeal to eternity, we fail to see that when prosecution took twelve years' time in leading evidence before the trial court and the judgment by trial court was delivered on 07.10.2013, the appeal was filed on 08.10.2013, how can appellant be castigated with the allegation that he intended to delay the appeal to eternity. The observation was unduly misplaced and incorrect. When statute grants right to appeal to an accused, he has right to take all steps and take benefit of all powers of the Appellate Court in the ends of the justice. In a criminal case Appellate Court has to consider as to whether conviction of the accused is sustainable or the appellant has made out a case for acquittal. The endeavour of all Courts has to reach to truth

and justice. The case of the complainant also has been that it is only after execution of the Trust Deed that talks regarding sale of the agricultural land was initiated. Trust Deed and the Resolution, which are foundation and basis for the start of the process of the sale of the land were documents, which ought to have been permitted to be proved to arrive at any conclusion to find out the criminal intent, if any, on the part of the appellant.

21. It is further relevant to notice that in case Crime No.315-A of 1991 filed by Shri Fateh Singh, who was also one of the purchasers and lodged the FIR on same allegations. In the said case, the second Trust Deed dated 18.10.1989 was filed and proved and ultimately, the appellant has been acquitted in the said case by judgment dated 30.11.2015, which has been brought on record as Annexure P-14. In the other criminal case, which was on the same allegations and which were also based on some MOU regarding sale of agricultural land, where amount of Rs.75,600/- was also paid by Shri Fateh Singh, on the same date, the Trust Deed was filed and proved relying on which acquittal of the appellant has been recorded. It has been further submitted by the appellant that reference of the judgment of the acquittal dated 30.11.2015 has also been made before the High Court, but High Court did not advert to the said judgment."

7. In the case on hand, the allegation as against the petitioners, that the sale agreement executed in favour of the defacto complainant-PW1. The first accused has executed sale deed in favour of the petitioners. When the petitioners specifically denied the allegations in their written statement in the suit filed by the defacto complainant, it is a vital document to decide the case of the prosecution. Further, the reason stated to the dismissal of the petition filed under Section 391 CrPC., to adduce additional evidence, 8 years had already passed in which the delay caused only by the petitioners. It is seen that the prosecution, also took several years to complete the trial and as such, not only on the part of the petitioner, there was a delay. Further, at the appellate stage the present application under Section 391 CrPC., is filed without causing any delay. As observed by the Hon'ble Supreme

Court of India in criminal case, the Appellate Court has considered as to whether conviction of the accused is sustainable or the appellant has made out a case for acquittal. The endeavour of the Courts have to reach the truth and justice. Therefore, the First Appellate Court ought not to have dismissed the petition.

8. In view of the above discussion, the order in CrI.M.P.No.418 in C.A.No.24 of 2018 and CrI.M.P.No.419 in C.A.No.25 of 2018, dated 27.12.2018 passed by the learned Sessions Judge, [Fast Track Mahila Court], Namakkal, are set aside and the First Appellate Court is directed to permit the petitioners to adduce additional evidence by recalling PW1 and mark the written statement-D1 of 1st and 3rd accused in O.S.No.149 of 2011 on the file of the Sub Court, Namakkal. Connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msm

To

- 1.The Inspector of Police, DCB Police, Namakkal.
- 2.The Public Prosecutor, High Court, Madras.

Copy To

- 1.The Sessions Judge,
Fast Track Mahila Court,
Namakkal
- 2.The Subordinate Judge,
Namakkal.

+1cc to Mr.S.Ramachandran, Advocate, S.R.No.16512
+1cc to Mr.R.Siddharth, Advocate, S.R.No.16511

CrI.O.P.Nos.4659 & 4666 of 2019

MU (CO)
CS/25/04/2019