



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.15461 of 2019
and Crl.M.P.No.7589 of 2019

T.Balakrishnan

... petitioner

Vs.

B.Karunanidhi

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to set aside the order dated 18.03.2019, in Crl.M.P.No.698 of 2018 in C.A.No.402 of 2017, on the file of the XIX Additional Sessions Court, City Civil Court, Chennai.

For Petitioner : M/s.G.Prabhakar

For Respondents : Mr.P.Jesus Moris Ravi

O R D E R

This petition has been filed challenging the order passed by the Court below, dismissing the petition filed by the petitioner under Section 391 of Cr.P.C., to adduce additional evidence.

2. The petitioner faced trial before the Fast Track Court, Magisterial Level No.1, Egmore at Allikulam, Chennai - 3, for an offence under Section 138 of the Negotiable Instruments Act. The trial Court, by judgment dated 14.11.2017, convicted the petitioner for the said offence and sentenced him to undergo six months simple imprisonment and directed him to pay compensation of a sum of Rs.7,00,000/- i/d to undergo two months simple imprisonment. Aggrieved by the same, the petitioner filed an appeal before the 19th Additional City Civil Court, Chennai, and the same is pending in Crl.A.No.402 of 2017. During the pendency of the appeal, the petitioner filed a petition under Section 391 of Cr.P.C to adduce additional evidence. This petition was dismissed by the Court below, on the ground that the petitioner has not even explained as to why



the additional evidence is required and the petitioner has not specifically stated the list of documents to be marked as additional evidence.

3. The learned counsel for the petitioner submitted that even though the petition filed before the Appellate Court does not give the list of documents that are relied upon as additional evidence, it has been specifically stated in the affidavit filed in support of the petition that the petitioner wants to mark the legal notice and the deposition of the respondent in C.C.No.4784 of 2011. The learned counsel further submitted that the petitioner was able to get these documents from the accused, who faced the trial in C.C.No.4784 of 2011, only after the completion of the proceedings and therefore the non-filing of the documents before the trial Court was neither wilful nor wanton.

4. The respondent has filed a counter and opposed this petition.

5. The learned counsel for the respondent submitted that the petitioner by filing this petition is only trying to drag on the proceedings. The learned counsel further submitted that the documents which are now sought to be marked as additional evidence will have absolutely no relevance for the purpose of deciding the present case. The learned counsel further submitted that the Court below has given cogent reasons, while dismissing the petition filed by the petitioner seeking for additional evidence and therefore, there is no ground to interfere with the same by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

6. This Court has considered the submissions made on either side and the materials available on record.

7. The petitioner who has filed an appeal against the judgment of conviction and sentence passed by the trial Court, wants to rely upon two documents as additional evidence in order to substantiate his defence. Those documents are the legal notice which was the subject matter in C.C.No.4784 of 2011 and the deposition of the respondent in C.C.No.4784 of 2011. According to the petitioner, these two documents will have a bearing in the present case, since the petitioner wants to establish the fact that the attesting witnesses in the promissory note in both the cases are one and the same and therefore these documents will clearly disprove the statements made by the respondent at the time of giving evidence before the trial Court.



8. The learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court in Brig. Sukhjeet Sing (Retd) MVC vs. State of Uttar Pradesh and others reported in 2019 SCeJ 713. The relevant portion of the judgment is extracted hereunder:

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. 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 be comes 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.



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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 endeavors 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 document, 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.

9. From the above judgment, it is clear that the accused person has been given the benefit of adducing additional evidence at the stage of appeal in order to substantiate his defence. It is the endeavour of the Court to reach the truth and render justice with all the available materials. There cannot be a straight jacket of formula enlisting of all the cases, where the additional evidence must be allowed and what are all the cases where it should not be allowed. It all depends on the facts and circumstances of a given case. The petitioner in this case does not want to rely upon some alien documents which will have no bearing in this case. It is an admitted fact that the respondent had also initiated similar proceedings in C.C.No.4784 of 2011, against another person and had deposed as a witness in the said case. The petitioner wants to mark the legal notice and the deposition of the respondent in the said case in C.C.No.4784 of 2011. No prejudice will be caused to the respondent, while permitting the petitioner to mark these two documents as additional evidences, since it will always be open to the respondent to question the relevancy and admissibility of these documents. The Appellate Court also has an opportunity to examine the impact of these two additional documents on the facts of the present case.



10. Therefore, in order to afford an opportunity to the petitioner to effectively defend himself in the case, this Court deems it fit to give an opportunity to the petitioner to file the legal notice and the cross examination of the respondent in C.C.No.4784 of 2011, as additional evidence in the appeal. It goes without saying that the relevancy and the admissibility of these documents will be independently considered by the Appellate Court.

11. In the result, the order passed by the Court below in Crl.M.P.No.698 of 2018, dated 18.03.2019 is hereby set aside. This Criminal Original Petition is allowed and the 19th Additional City Civil Court, Chennai, is directed to complete the proceedings in Criminal Appeal No.402 of 2017, within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

The XIX Additional Sessions Court,
City Civil Court,
Chennai.

Copy To
The XVI Additional Judge,
FAC XIX Additional City Civil Court,
Chennai.

+1cc to Mr.G.Praphakar, Advocate SR.No.55538

Crl.O.P.No.15461 of 2019

GMV (31/07/2019)