

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.1157 of 2019
Crl.MP.No.15549 of 2019

R.R.Vasudevan

: Petitioner

Vs

National Agricultural Cooperative Marketing
Federation of India Limited, by
Branch Manager, N.N.Subramaniam
Chennai-84

: Respondent

Prayer:- This Criminal Revision Petition is filed against the order dated, 16.08.2019, made in Crl.MP.No.13820 of 2019 in CA.No.623 of 2018, by the XVII Additional Sessions Judge, Chennai.

For Petitioner : Mr.V.Anuradha
For Respondent : Mr.D.Vijayakumar

ORDER

1.This Criminal Revision Petition is filed against the order dated, 16.08.2019, made in Crl.MP.No.13820 of 2019 in CA.No.623 of 2018, by the XVII Additional Sessions Judge, Chennai, dismissing the said petition filed under Section 391 of Cr.PC, seeking to mark additional document relating to EP3 of 2018, before the Principal District Judge, Villupuram, in CA.No.623 of 2018.

2.The facts leading to filing of this Criminal Revision Petition and necessary for disposal, are as follows:-

- a) The Petitioner is the 2nd Respondent in Crl.A.No.623 of 2018, which was filed against the judgement of conviction and sentence in CC.No.9807 of 2007 under Section 138 of the Negotiable Instruments Act. The appeal had been filed by the Respondent / complainant, seeking to enhance the sentence awarded in CC.No.9807 of 2007, dated 19.6.2018 and to award compensation as per Section 357 of Cr.PC and to award cost and other damages in the circumstances of the case.

- b) The Petitioner was convicted in CC.No.9807 of 2007 under Section 138 of the Negotiable Instruments Act and sentenced to undergo 10 months Simple Imprisonment. Since the amount was already realised by the Respondent by way of final arbitration proceedings against the Petitioner herein and the award of arbitration was also executed before the Principal District Judge, Villupuram, in EP.No.3 of 2018 in ACP.No.2 of 2008 wherein the principal sum of Rs.90,81,145/- was taken along with interest at 9.5% p.a. and Rs.87,08,565/- with charges and advocate fees of Rs.62,434/- , totalling Rs.1,78,52,154/- by attaching the property of the judgement debtor who is the Petitioner herein.
- c) Contending that the property, which has been attached is worth about several crores, the Petitioner insisted for marking the document before the lower Court, however, it had been negated by the lower Court. Against the judgement of the conviction, the Petitioner had filed Crl.A.No.375 of 2018 and finding that marking of additional document is very much essential and necessary, the Petitioner had filed Crl.MP.No.4111 of 2019 in Crl.A.No.375 of 2018, praying to mark them as additional evidence. The same was dismissed by the Appellate Court, as against which, the Petitioner had preferred Crl.RC.No.605 of 2019, wherein this Court had expressed its view to file a Petition for marking additional document in the present appeal. The Respondent/complainant had filed Crl.A.No.623 of 2018, seeking to enhance the sentence and to award compensation and thereby, the Petitioner had filed Crl.MP.No.13820 of 2019, seeking to mark the document relating to EP.No.3 of 2018 pending before the Principal District Judge, Villupuram, as additional document in CA.No.623 of 2018.
- d) The Respondent/ complainant had filed a counter, stating that the High Court never expressed such a view and that Crl.RC.No.605 of 2019 was dismissed with the following observation:-

"When the Court was about to dismiss this Criminal Revision Case on merits, the learned counsel for the Petitioner sought permission of this Court to withdraw this revision case and she also made an endorsement to that effect.

Permission is granted. Accordingly, this Criminal Revision Case is dismissed as withdrawn. Consequently, connected miscellaneous petition is closed."

It was contended by the Respondent that the present Petition to mark the additional document was filed only with an intention to prolong the case and that only an arbitration award has been passed and that the Petitioner

is scuttling the process of recovery by various means. It had been further contended that the Petitioner had initially filed the Petition before the Magistrate Court during trial under Section 311 of Cr.PC and that though he had stated that there were several documents to prove their case, no document was produced and thereby sought to dismiss the Petition.

e) The Appellate Court, after hearing the parties and perusing all the records, had passed the impugned order, dismissing the Petition. As against the same, the present Criminal Revision Case has been filed.

3.This court heard the submissions of the learned counsel on either side.

4.The learned counsel for the Petitioner would submit that the appeal in Crl.A.No.623 of 2018 has been filed by the Respondent/ complainant, seeking to enhance the compensation and to enhance the sentence and that the Respondent had obtained an award for an amount of Rs.1,78,52,154/-, against the Petitioner and that marking of the document relating to the execution proceedings is very much necessary to be marked as the additional document and that the Appellate Court, without taking into consideration the need and necessity for marking those documents, had dismissed the Petition.

5.Per contra, the learned counsel for the Respondent would submit that the Appellate Court, finding that the Petition had been filed only for the purpose of delaying the pronouncement of judgement in the appeal, had dismissed the Petition and that the Appellate Court had also found that the documents sought to be marked as additional documents do not have any bearing or relevance to this case and the Appellate Court had also taken into consideration the conduct of the Petitioner in filing the Petition only after the case was posted for arguments finally. He would, specifically point out to paragraph 9 of the order and submit that the Appellate Court had rendered a categorical finding that the Petition had been filed only with a view to delay the appeal and would seek for dismissal of this Criminal Revision Case.

6.I have considered the submissions of the learned counsel on either side and thoroughly scanned through the entire materials available on record.

7.At the outset, this Court feels it apposite to refer to the paragraph 9 of the impugned order as under:-

"9. Perusal of records reveals that the appeal has been posted for arguments on 10.01.2019, the copy of grounds of appeal and typed set were served on the Respondent counsel and the case was posted for arguments finally by 28.1.2019. Further, the case was adjourned to several hearing dates, viz. 7.2.2019, 14.2.2019, 22.2.2019, 29.4.2019, 7.6.2019, 14.6.2019, 21.6.2019 and 4.7.2019. On 4.7.2019 the case has been adjourned for production

of stay order copy on 10.7.2019. From 10.7.2019 the case has been adjourned to 18.7.2019. On 18.7.2019, instead of filing stay order copy, this Petition under Section 391 of Cr.PC has been filed. The Petitioner/2nd Respondent counsel is not ready to commence the arguments. After obtaining several adjournments for arguments on filing of adjournment Petitions, the Petitioner/2nd Respondent has come forward with the present Petition. Considering the above circumstances now let us see whether the application filed by the Petitioner/2nd Respondent is to be allowed.

8. Further, the court below, finding that the additional document sought to be marked is not a necessary document for deciding the appeal, had dismissed the Petition. Section 391 of Cr.PC prescribes that when an Appellate Court dealing with any appeal under this Chapter thinks additional evidence to be necessary, shall record its reasons for doing so. In this case, the Petitioner has not made out any valid ground for the Appellate Court to mark the additional document as additional evidence.
9. Further, it is seen that the appeal had been posted for arguments finally on 28.1.2019 and thereafter, it had been adjourned to several hearing dates. On 4.7.2019 the case has been adjourned for production of stay order copy on 10.7.2019. From 10.7.2019 the case has been adjourned to 18.7.2019. On 18.7.2019, instead of filing stay order copy, the present Petition under Section 391 of Cr.PC has been filed. The Appellate Court, rightly finding that there was no necessity for marking those documents and finding that the Petition had been filed only with an intention to delay the appeal, had rightly dismissed the Petition. I do not find any infirmity or perversity in the impugned order, dismissing the Petition.
10. In the result, this Criminal Revision Case is dismissed. Consequently, the connected MP is closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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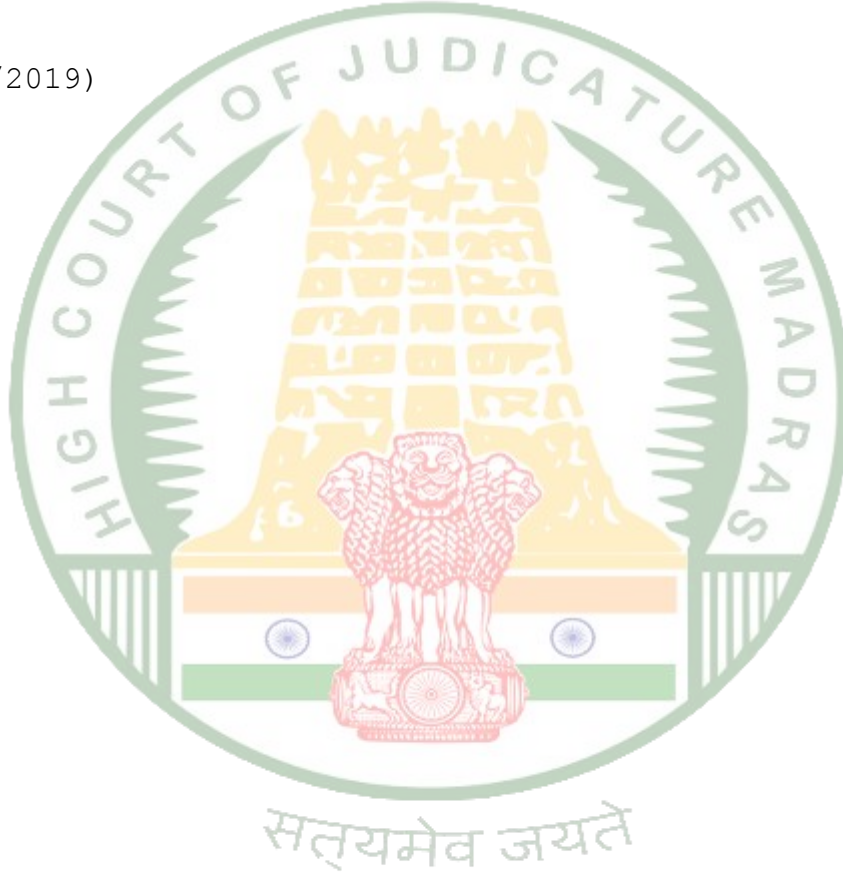
1.The XVII Additional Sessions Judge, Chennai.

2.The :Principal District Judge, Villupuram.

+1cc to Mr.D.Vijayakumar, Advocate, SR.No.97120.

Cr1.RC.No.1157 of 2019

CP (CO)
CSR(31/12/2019)



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