

THE HONOURABLE JUSTICE G. SRIDEVI

CRIMINAL REVISION CASE No.346 OF 2019

ORDER :

1. The present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. aggrieved by the order, dated 28.02.2019 passed in CrI.M.P.No.71 of 2018 in CrI.A.No.55 of 2017, wherein and whereunder an application filed under Section 391 of Cr.P.C., to take the evidence of one M.Saidulu as defence witness, was rejected.

2. The facts in issue are as under:

The first respondent herein filed a private complaint against the petitioner/accused for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Vide judgment, dated 17.02.2017, in C.C.No.1191 of 2015, the learned Judicial magistrate of First Class, Miryalaguda, convicted the petitioner/accused and sentenced him to undergo simple imprisonment for a period of two years and to pay compensation to the complainant to the extent of twice the cheque amount and simple interest thereon at 9% p.a. from the date of the order, in default, to suffer simple imprisonment for a period of six months. Aggrieved by the same, the petitioner/accused preferred CrI.A.No.55 of 2017 before the VIII Additional Sessions Judge, Miryalaguda. Pending appeal, the petitioner filed CrI.M.P.No.71 of 2018 under Section 391 Cr.P.C. either to take or to direct the trial Court to take additional evidence of M.Saidulu, attesting witness to the promissory note, which was marked as

Ex.P.5. The said application was dismissed on 28.02.2019. Challenging the same, the present revision is filed.

3. Learned Counsel for the revision petitioner submits that the petitioner never borrowed any amount from the 1st respondent/complainant. The petitioner neither executed Ex.P5-Promissory note nor issued Ex.P1-Cheque in favour of the 1st respondent/complainant. The 1st respondent did not examine one M.Saidulu, who attested Ex.P5, to prove that she had paid amount to the petitioner under Ex.P5. It is further submitted that the evidence of the said M.Saidulu, is crucial to prove the authenticity of Ex.P5-Promissory Note.

4. Learned Counsel for the 1st respondent/complainant contended that having availed the sufficient opportunity given by the trial Court, the revision petitioner/accused examined himself as D.W.1, besides examining two independent witnesses as D.Ws.2 and 3. It is further contended that after closure of evidence on behalf of the revision petitioner/accused, the case was posted for arguments and at that stage, the revision petitioner filed CrI.M.P.No.1527 of 2016 for examination of another witness and the same was dismissed on 02.08.2016. Aggrieved by the same, the revision petitioner filed CrI.R.P.No.43 of 2016 before the appellate Court, which was also dismissed. Hence, there are no grounds to allow the revision and the same is liable to be dismissed.

5. Before proceeding further, it would be useful to refer to Section 391 Cr.P.C. which reads as under:

"391. Appellate Court may take further evidence or direct it to be taken.-

(1) In dealing with any appeal under this Chapter, 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 a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) the taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

6. According to Section 391 (1) Cr.P.C., the appellate Court is entitled to take additional evidence, only if it thinks additional evidence to be necessary. But, at the same time, Section 391 Cr.P.C. would not be applicable when the complainant or the defence having had ample opportunities to produce evidence before the trial Court but failed to do so.

7. A perusal of the entire material placed before the Court would show that during the trial the revision petitioner/accused, besides examining himself as D.W.1, examined two independent witnesses as D.Ws.2 and 3. After examining DWs.1 to 3, the learned Counsel appearing on behalf of the revision petitioner before the trial Court reported no further evidence and as such the evidence on behalf of the revision petitioner/accused was closed by the trial Court. When the case was posted for arguments, the revision petitioner/accused filed CrI.M.P.No.1527 of 2016 to permit him to examine another witness as DW.4, which was dismissed. Challenging the same, CrI.R.P.No.43 of 2016 was filed, which was also dismissed. From the impugned order, it is evident that the even though ample opportunity was afforded to the revision petitioner/accused by the trial Court, he did not take any steps to summon and examine the proposed witness. Hence, this Court does not see any manifest error in the order passed by the lower appellate Court whereby application moved under Section 391 Cr.P.C. has been rejected.

8. Having considered the facts and circumstances of the case, this Court is of the view that the impugned order, dated 28.02.2019 passed in CrI.M.P.No.71 of 2018 in CrI.A.No.55 of 2017 on the file of the VIII Additional Sessions Judge at Miryalaguda, does not suffer from any infirmity or illegality requiring interference by this Court.

9. Accordingly, the Criminal Revision Case is dismissed.
Miscellaneous petitions, if any, pending in this Criminal Revision
Case shall stand closed.

JUSTICE G. SRIDEVI

20.09.2019
gkv/Gsn

