

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION Nos. 2865 and 2885 of 2019

COMMON ORDER:

Crl.P.No.2865 of 2019 is filed by the petitioners/accused under Section 482 Cr.P.C., to quash the order, dated 08.03.2019, passed in Crl.M.P.No.171 of 2019 in C.C.No.79 of 2016 on the file of the IV Special Magistrate at Erramanzil, Hyderabad, wherein an application filed by the 2nd respondent/complainant for receiving certain documents as additional evidence, was allowed.

Crl.P.No.2885 of 2019 is filed by the petitioners/accused under Section 482 Cr.P.C., to quash the order, dated 08.03.2019, passed in Crl.M.P.No.172 of 2019 in C.C.No.79 of 2016 on the file of the IV Special Magistrate at Erramanzil, Hyderabad, wherein an application filed by the 2nd respondent/complainant to issue summons to one Srinivasa Murthy, Company Secretary, to give evidence, was allowed.

Since the issue in both the Criminal Petitions is inter-connected, they are being disposed of by this common order.

As seen from the record, the 2nd respondent/complainant filed Crl.M.P.No.171 of 2019 under Section 254 of Cr.P.C. seeking to receive additional documents and also filed Crl.M.P.No.172 of 2019 under Section 311 Cr.P.C., to issue summons to one Srinivasa Murthy, Company Secretary, to give evidence. The averments in the

said petitions disclose that the 2nd respondent/complainant filed the above complaint under Section 138 of N.I. Act as the two cheques issued by the accused towards discharge of its liability have been dishonoured. The second respondent/complainant has been examined as P.W.1 and got marked Exs.P1 to P28. At the time of cross-examination of P.W.1, Exs.D1 to D5 have been marked and the matter was posted for further evidence of the second respondent/complainant. It is also stated that one Srinivasa Murthy is presently working as the Company Secretary and Executive Vice President (Legal) in the second respondent's company and he is aware of all the transactions in question. For the purpose of better adjudication of the case, the second respondent/complainant intends to examine the said Srinivasa Murthy as PW.2 and to mark the documents annexed to the petition on behalf of the second respondent/complainant.

Separate Counters came to be filed by the accused stating that the proposed documents are not the part of the complaint and there is no whisper about the existence of the said documents at the time of filing the complaint. It is also stated that no description of the proposed witness was given either in the petition or in the complaint. PW.1 was cross-examined at length and only to fill up the lacunae of the case, the second respondent filed the above petitions and also with an intention to drag on the proceedings. Therefore, the accused prayed to dismiss the above petitions.

After considering the rival submissions, the learned Magistrate allowed the said petitions. Challenging the same, the present Criminal Petitions are filed by the accused.

Heard learned Counsel for the Petitioners/accused; learned Additional Public Prosecutor for the first respondent and learned Counsel appearing for the second respondent/complainant.

It has been submitted on behalf of the petitioners/accused that without giving any reasons, the trial Court allowed the applications on the ground that the accused will have a fair opportunity to cross-examine the proposed witness. It is also stated that the trial Court has not given any finding that the evidence of proposed witness as well as the documents annexed to the petition are essential for the just decision of the case. In the absence of such findings, the trial Court is not justified in allowing the petitions.

On the other hand, learned Counsel for the second respondent/complainant contended that there is no illegality or irregularity in the order passed by the trial Court and hence there is no need to interfere with the impugned order.

In *Vijay Kumar v. State of Uttar Pradesh and another*¹ the Apex Court observed as under:

“There is no manner of doubt that the power under Section 311 of Code of Criminal Procedure is a vast one. This power can be exercised at any stage of the trial. Such a power should be exercised provided the evidence which may be

¹ (2011) 8 SCC 136

tendered by a witness is germane to the issue involved, or if proper evidence is not adduced or relevant material is not brought on record due to any inadvertence. It hardly needs to be emphasized that power under Section 311 should be exercised for the just decision of the case. The wide discretion conferred on the court to summon a witness must be exercised judicially, as wider the power, the greater is the necessity for application of the judicial mind. Whether to exercise the power or not would largely depend upon the facts and circumstances of each case. As is provided in the Section, power to summon any person as a witness can be exercised if the court forms an opinion that the examination of such a witness is essential for just decision of the case.”

In *State of Haryana v. Ram Mehar and others*² the Apex Court held as under:

“The exercise of power under Section 311 Cr.P.C. can be sought to be invoked either by the prosecution or by the accused persons or by the Court itself. The High Court has been moved by the ground that the accused persons are in the custody and the concept of speedy trial is not nullified and no prejudice is caused, and, therefore, the principle of magnanimity should apply. Suffice it to say, a criminal trial does not singularly centres around the accused. In it there is involvement of the prosecution, the victim and the victim represents the collective. The cry of the collective may not be uttered in decibels which are physically audible in the court premises, but the court has to remain sensitive to such silent cries and the agonies, for the society seeks justice. Therefore, a balance has to be struck. Regard being had to the concept of balance, and weighing the factual score on the scale of balance, the High Court has fallen into absolute error in axing the order passed by the trial Court. When the

² (2016) 8 SCC 762

concept of fair trial is limitlessly stretched, having no boundaries, the orders like the present one may fall in the arena of sanctuary of errors. Hence, the necessity of doctrine of balance is reiterated."

In the instant case, the trial Court after considering the material available on record and also the submissions made by the learned Counsel for both sides, allowed the applications on the ground that the accused will have fair and better opportunity to cross-examine the proposed witness.

Considering the position of law laid down in the aforesaid decisions of the Apex Court and having regard to the facts and circumstances of the case, I am of the considered view that no party to the trial can be denied an opportunity to produce relevant documents which were not brought on record due to inadvertence and if the said documents are received, no prejudice would be caused to the defence as an adequate opportunity would be available to the accused to cross-examine the witnesses and to lead rebuttal evidence.

Accordingly, both the Criminal Petitions are dismissed. Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE G.SRI DEVI

17.10.2019
Gkv/Gsn

