HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL REVISION CASE No. 1091 of 2019

ORDER:

This Criminal Revision Case is filed by the revision petitioners/accused under Sections 397 and 401 of Cr.P.C., aggrieved by the order, dated 12.09.2019 passed in Crl.M.P.No.1806 of 2019 in C.C.No.155 of 2016, on the file of the V-Special Magistrate, Hyderabad, wherein and whereunder an application filed by the revision petitioners/accused under Section 254 (2) of Cr.P.C. to summon one K.D.Gadilingappa, R/o. Bellary, Karnataka State, was dismissed.

Brief facts of the case are that the 1st respondent/ complainant company filed a private complaint against the revision petitioners/accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 alleging that the complainant company doing business in seeds and during the course of business, it supplied seeds under different invoices under running account to the 1st revision petitioner/accused and as on 21.09.2016, accused No.1 is liable to pay an amount of Rs.5,51,562/- to the 1st respondent/complainant company. It is further stated that on persistent demands, the 2nd revision petitioner/accused issued a cheque bearing No.433774 dated 26.09.2016 for Rs.5,51,562/-, on behalf of the 1st revision petitioner/accused, drawn on Canara Bank, Lakshminagar Branch, Hubli, Karnataka, towards discharge of the liability. When the said cheque was presented by the 1st respondent/complainant in Canara Bank, Hi-tech Agriculture Finance Branch, Abids, Hyderabad, for encashment, the same was dishonoured with an endorsement 'payment stopped by drawer'. After complying with all the requirements as contemplated under the N.I. Act, the 1st respondent/complainant filed the aforesaid complaint and the same was numbered as C.C.No.155 of 2016.

In the aforesaid case, the 2nd revision petitioner/accused was examined as D.W.1 and the matter was coming up for his further evidence. It is stated that the 2nd revision petitioner/accused has taken a defence that the 1st respondent/complainant's company has obtained the subject cheque from him for the purpose of security while appointing him as a Distributor. Further, D.W.1 has also taken a defence that he has informed the company about issuing of stop payment instructions to the bank. In support of the defence, the revision petitioners/accused have filed relevant correspondence and the receipt of which has been acknowledged by the former Sales Officer of the Company namely K.D.Gadilingappa. In order to prove the same, the examination of the said Sales Officer is necessary. Therefore, it was submitted that it is essential to summon and examine him before the Court to arrive at a just decision and no prejudice would be caused to the 1st respondent/complainant if the petition is allowed. Whereas, if the petition is not allowed, great prejudice would be caused to the revision petitioners/accused.

Though the 1st respondent/complainant reported no counter, but at the time of arguments, it was submitted that the reasons stated in the petition are not satisfactory and they are far away from truth. The present petition is filed only to drag on the matter when the case was posted for further defence evidence and that the matter was already underwent several adjournments.

After considering the rival submissions and perusing the entire material available on record, the learned Magistrate dismissed the said petition. Challenging the same, the present Criminal Revision Case is filed by the revision petitioners/ accused.

Though notice served on the 1st respondent/complainant, none appeared on its behalf. Hence, heard the learned Counsel for the revision petitioners/accused and learned Additional Public Prosecutor for the 2nd respondent-State.

It has been submitted on behalf of the revision petitioners/accused that the order passed by the Court below is illegal, arbitrary and suffers from infirmity which warrants interference of this Court. The Court below grossly erred in dismissing the petition filed by the revision petitioners to summon and examine the Former Sales Officer of the 1st respondent/complainant company by name K.D.Gadilingappa in order to prove the letters acknowledged by him. The Court below failed to consider the fact that the 2nd revision petitioner/accused has taken a defence that the 1st respondent/complainant company has obtained two blank signed cheques from him for the purpose of security while appointing him as Distributor, through its Sales Officer K.D.Gadilingappa, who acknowledged the receipt of the same under letter, dated 17.05.2014 and that to prove the said letter, the examination of the said Sales Officer is essential. The Court below also failed to consider the other defence taken by the 2nd revision petitioner/accused that he had informed the 1st respondent/complainant company about the stop payment instructions given to his banker through its Sales Officer namely K.D.Gadilingappa, who acknowledged the receipt of the intimation under letter, dated 04.01.2016 and that to prove the said letter, the examination of the said Sales officer is essential. The Court below grossly erred in holding that summoning and examination of the said Sales Officer is not necessary on the ground that the burden to prove the said fact is on the 1st respondent/complainant and not on the revision petitioner/accused. The Court below failed to consider the fact that when the 2nd revision petitioner/accused admits the signature on the cheque in question and contends that it has not been issued towards discharge of legally enforceable debt and that it was issued only for security purpose, there is a statutory initial presumption in favour of the 1st respondent/complainant under Sections 118 and 138 of the Negotiable Instruments Act, 1881 and the burden of rebutting the said initial presumption is on the revision petitioners/accused only. The Court below grossly erred in holding that in the cross-examination of P.W.1, there is no suggestion by the revision petitioners/accused to the effect that the blank cheques were obtained by the 1st respondent/complainant company through the proposed witness. In fact, in the very beginning of the cross-examination of P.W.1, there is a categorical suggestion to that effect. The

Court below also erred in holding that the revision petitioners/ accused have not given correct postal address of the proposed witness. In fact, the address of the proposed witness given by the revision petitioners/accused is correct and is sufficient to deliver the summons. The Court below without taking into consideration the fact that non-examination of the proposed witness would affect substantial rights of the accused and would have serious impact on the final result of the case, arbitrarily dismissed the petition.

Learned Additional Public Prosecutor, appearing for the 1st respondent-State, would submit that the Court below rightly dismissed the petition filed by the revision petitioners/accused and there is no illegality or irregularity in the said order.

Before proceeding further, it would be appropriate to refer to Section 254 (2) of Cr.P.C.

> "254. Procedure when not convicted.
> (1) x x x x
> (2) The Magistrate may, if he thinks fit, on the application of the prosecution or the accused, issue a summons to any witness directing him to attend or to produce any document or other thing."

Section 254(2), Cr.P.C. provides that the Magistrate may, if he thinks fit, on the Application on the prosecution or the Accused, issue a summons to any Witness directing him to attend or to produce any documents or other thing. The discretion is certainly vested with the Magistrate to consider whether Witnesses cited by the Accused should all be examined. In a case, where the Magistrate finds that the Witness Schedule has been filed with the sole purpose of delaying the proceedings or that no meaningful purpose would be served by the examination of the Witnesses, it is open to him to decline the request for summoning the Witness.

The power under Section 254(2) Cr.P.C. conferred on the Magistrate is of wider amplitude than that of the Sessions Judge or Magistrate in a similar situation while trying a sessions case or a warrant case. Section 233(3) Cr.P.C. relates to a situation where the Accused in a sessions case wants to adduce defence evidence or to produce any document or thing. Sub-Section (3) enables the Judge to issue process. Of course, it is with a rider. The Sessions Judge can refuse to issue process if he finds that the Witness List is filed for the purpose of vexation or delay or defeating the ends of justice. Under Sections 233(2) & 243(2), the power of the Sessions Judge and

Magistrate to refuse issuance of process is circumscribed by the three facts mentioned specifically viz., vexation, delay or defeating the ends of justice. Thus, in cases not coming under any of the above categories, Session Judge or the Magistrate in a trial of warrant cases will have to issue process to the Defence Witnesses.

So far as Section 254(2) Cr.P.C., is concerned there is no such limitation. Thus, it can be seen from a reading of Sections 233(2), 243(2) and 254(2), that the Magistrate's discretion as to allowing or refusing an Application either by the prosecution or by the Accused for issuing Summons to any Witness directing him to attend or to produce any document before the Court is wider so far as trial of Summary cases are concerned. But that does not mean that the Magistrate can act arbitrarily, whimsically or capriciously. It has to be considered on the facts and circumstances of each case. It may not be possible to enumerate in what circumstances the Magistrate can issue process for examining Defence Witnesses and in what circumstances he should not do it. The situation in any case particularly bearing in mind the onus of proof. In other words, the Court should not scuttle the defence evidence on flimsy grounds. The right of the accused to have his witnesses examined or to have documents produced on his side cannot be denied. The general rule is that an opportunity should be conferred to the accused to adduce his evidence.

For the aforesaid reasons and having regard to the facts and circumstances, this Court is of the view that the impugned order is unsustainable. Hence it is liable to be set aside.

Accordingly, the Criminal Revision Case is allowed and the order of the learned Special Magistrate-V, Hyderabad, dated 12.09.2019 in Crl.M.P.No.1806 of 2019 in C.C.No.155 of 2016, is hereby set aside. The learned Magistrate is directed to issue summons to K.D.Gadilingappa. The revision petitioners/ accused are directed to furnish correct residential or official postal address of the said person before the trial Court.

JUSTICE G.SRI DEVI

22.11.2019
gkv/Gsn