



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.R.C. (MD)No.199 of 2015

and

M.P. (MD)No.1 of 2015

WEB COPY

1.M/s.Aeon Exporters a Partnership Firm,
Represented by its Partner,
A.Radhakrishnan

2.A.Radhakrishnan

... Petitioners / Petitioners /
Appellants

-vs-

K.M.Mohana Sundaram

... Respondent / Respondent /
Complainant

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records and set aside the order passed in Cr.M.P.No.2451 of 2014 in Cr.A.No.138 of 2014 dated 09.03.2015 on the file of the Sessions Court, Trichirappalli.

For Petitioners : Mr.V.Illanchezian

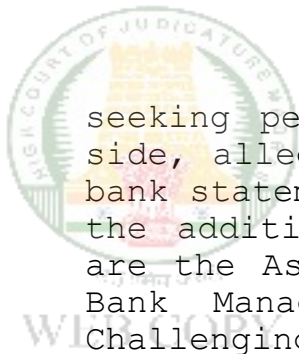
For Respondent : No Appearance

ORDER

These petitioners are the appellants in Cr.A.No.138 of 2014. In appeal stage, the petitioners have filed Cr.M.P.No.2451 of 2014 under Section 391 of Cr.P.C., permitting the petitioners / accused to examine the additional witnesses and the said petition was dismissed. Challenging the same, the present Criminal Revision Petition is filed.

2.The case of the petitioners is that the petitioners are the accused in S.T.C.No.1792 of 2011 on the file of the learned Judicial Magistrate No.6, Trichirappalli for the offence under Section 138 of Negotiable Instruments Act (hereinafter referred to as 'the Act'). Before the Lower Court, the complainant himself has examined as P.W.1 and marked Exs.P.1 to P.5. On the side of the petitioners / accused, the second petitioner has examined himself as D.W.1 and marked Exs.D.1 to D.3. Upon consideration of the evidences adduced by the respondent herein and the petitioners herein, the learned Judicial Magistrate No.6, Trichirappalli has convicted the accused under Section 138 of the Act, sentencing to undergo simple imprisonment for three months and to pay a compensation of Rs.5,00,000/- to the complainant.

3.Assailing the said judgment and conviction, the petitioners preferred an appeal before the Lower Appellate Court in Cr.A.No.138 of 2014. Before the Lower Appellate Court, the petitioners have filed a petition under Section 391 of Cr.P.C.,



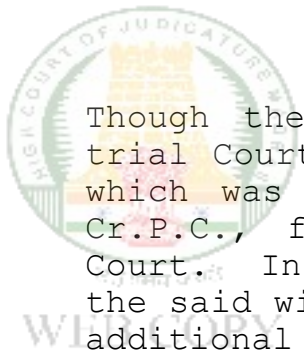
seeking permission to examine additional witnesses on the defence side, alleging that the documents Exs.D.1 and D.2 are the company's bank statement and closing report. In order to prove the documents, the additional evidences are necessary. The additional evidences are the Assistant Commercial Tax Officer, Tiruppur (North) and the Bank Manager. However, the said application was dismissed. Challenging the same, the present Criminal Revision Petition is filed.

4.The learned counsel appearing for the petitioners would submit that the additional evidences are necessary on the simple ground that before the Lower Court, the documents in Ex.D.1 and D.2 were marked and the said documents are company's bank statement and closing report. Though the said documents were marked before the Lower Court, the Lower Court has disbelieved the said documents and convicted the accused for untenable grounds. However, in order to prove the said documents in proper perspective manner, the evidences of Assistant Commercial Tax Officer, Tiruppur (North) and Bank Manager are necessary and the dismissal of the said application by the Lower Appellate Court is unsustainable. Accordingly, he prayed for allowing this petition.

5.At the time of entertaining the revision, notice was ordered and private notice was also permitted. However, till date the petitioners have not taken any steps to serve notice through proper mode. Even affidavit of service filed by the petitioners disclosed that the service was not completed to the respondent.

6.Considering the facts and circumstances, since the revision is pending from the year 2015 onwards, this Court is inclined to dispose of the revision with available materials. The undisputed fact is that the petitioners were already convicted by the trial Court, after examining the documents, which were already marked by the petitioners. In order to substantiate the documents, the petitioners want to examine the evidences as additional evidences.

7.It is to be noted that the provisions of Section 391 Cr.P.C., are akin to the provisions contained in Order 41 Rule 27 C.P.C. In the present case, the admitted case of the petitioners as well as the respondent is that in the trial proceedings the petitioners have marked the said documents as Exs.D.1 and D.2 and the trial Court after examining the documents in detail and after elaborate discussions, has disbelieved the version of the accused. In order to prove the said documents, the petitioners now want to examine the additional witnesses ie., Assistant Commercial Tax Officer, Bank Officer and Postman. That aspect elaborately discussed by the Lower Court and thereafter, the trial Court has held that the guilt of the accused / petitioners herein is proved and hence, convicted the petitioners / accused. In the appeal ~~service, the petitioners~~ the petitioners want to examine the above said evidences.



Though the said evidences are already available even before the trial Court, there is no proper explanation given in the affidavit, which was filed in respect of the application under Section 391 Cr.P.C., for not examining the said witnesses before the Lower Court. In the absence of any proper explanation for not examining the said witnesses in the Lower Court, the question of examining the additional evidences does not arise at all.

8.The revisional power of the High Court shall not be exercised in relation to any interlocutory order passed in any appeal, unless the order of the trial Court is perverse. In the present case, the perversity is not established by the revision petitioners. Hence, I do not find any error in the order of the Lower Appellate Court.

9.Accordingly, this Criminal Revision Petition stands dismissed. The Lower Appellate Court is directed to dispose of the appeal, within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Myr

To

1.The Sessions Judge, Trichirappalli.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.V.ILLANCHEZIAN, Advocate (SR-9505[F]

CRL.R.C. (MD)No.199 of 2015

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SMA/12/03/2020/3P/4C