

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No. 2498 of 2019

ORDER:

The present Criminal Petition is filed under Section 482 Cr.P.C., questioning the order, dated 08.02.2019, passed in CrI.M.P.No.327 of 2018 in CrI.A.No.5 of 2017 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge, Karimnagar, wherein and whereunder an application filed by the petitioner/appellant/accused, under Section 391 (1) Cr.P.C., to permit him to produce additional evidence on his behalf by examining one Thodeti Thirupati so as to prove his claim, was dismissed.

The facts which led to filing of the present Criminal Petition are as under:

The 1st respondent/complainant filed a complaint against the petitioner/accused for the offence punishable under Section 138 of Negotiable Instruments Act, 1881, which was registered as C.C.No.983 of 2009 and later it was transferred and numbered as C.C.No.291 of 2010 on the file of the Court of Special Judicial Magistrate of First Class (Excise) at Karimnagar. By its judgment, dated 21.12.2016, the trial Court convicted the petitioner/accused for the above mentioned offence and sentenced him to undergo simple imprisonment for a period of six months and to pay Rs.8,00,000/- as

compensation within a period of two months, in default, he shall undergo simple imprisonment for three months. Challenging the same, the petitioner/accused preferred CrI.A.No.5 of 2017 before the Judge, Family Court-cum-Additional District and Sessions Judge, Karimnagar. Pending the said appeal, the petitioner/accused filed CrI.M.P.No.327 of 2018 under Section 391 (1) Cr.P.C. requesting the Court to permit him to produce additional evidence on his behalf by examining the said Thodeti Thirupathi to prove his claim. The said application was dismissed by the learned Judge, Family Court-cum-Additional District and Sessions Judge, Karimnagar. Aggrieved by the same, the present Criminal Petition is filed.

Heard learned Counsel for the petitioner/appellant/accused; learned Counsel appearing for the 1st respondent/complainant and the learned Additional Public Prosecutor appearing for the 2nd respondent/State.

Learned Counsel for the petitioner would submit that the learned Magistrate, without considering the legal and factual evidence on record in proper perspective, convicted the petitioner/accused in C.C.No.291 of 2010. He further submits that since the Counsel for the petitioner has not properly prosecuted the case, he had changed his counsel and engaged another advocate on 04.11.2018. During pendency of appeal, the petitioner came to know that the 1st respondent/complainant filed C.C.No.3 of 2013 against one Tirupathi, for the offence punishable under Section 138 of the

N.I. Act, which was dismissed and the said Tirupathi was acquitted on 17.12.2015 on the ground that the 1st respondent/ complainant has no money lending licence. Apart from that, the 1st respondent/complainant also filed cases under Section 138 of Negotiable Instruments Act, 1881 vide C.C.Nos.897 of 2012, 69 of 2014, 719 of 2014, 631 of 2015, 1406 of 2016 and 1299 of 2018 without having any money lending licence. Since the 1st respondent/complainant is doing money lending business without obtaining licence and without disclosing the amounts in his Income Tax Returns, the present complaint is not maintainable. In order to bring the said facts, which were came to light after passing the judgment by the trial Court in C.C.No.291 of 2010, the petitioner filed CrI.M.P.No.327 of 2018 under Section 391 (1) of Cr.P.C. to adduce additional evidence on his behalf by examining the said Thodeti Thirupathi to prove his claim, but the learned Sessions Judge erroneously rejected the application without understanding the scope and intent of Section 391 of Cr.P.C.

Learned Counsel for the 1st respondent/complainant would submit that changing of Counsel is not a ground to produce additional evidence and no effort has been made by the petitioner/accused at the earliest point of time.

As seen from the impugned order, the reason for rejection of the application was that despite availing several opportunities, the petitioner/accused failed to lead additional evidence on his behalf.

It was further held that it can be safely presumed that the petition was filed only to protract the case proceedings, which cannot be permitted in the interest of justice.

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

“(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.”

A reading of the provisions of Section 391 Cr. P.C. itself makes it crystal clear that the Appellate Court is having power to take further evidence or to direct it to be taken by the trial Court by recording its reasons.

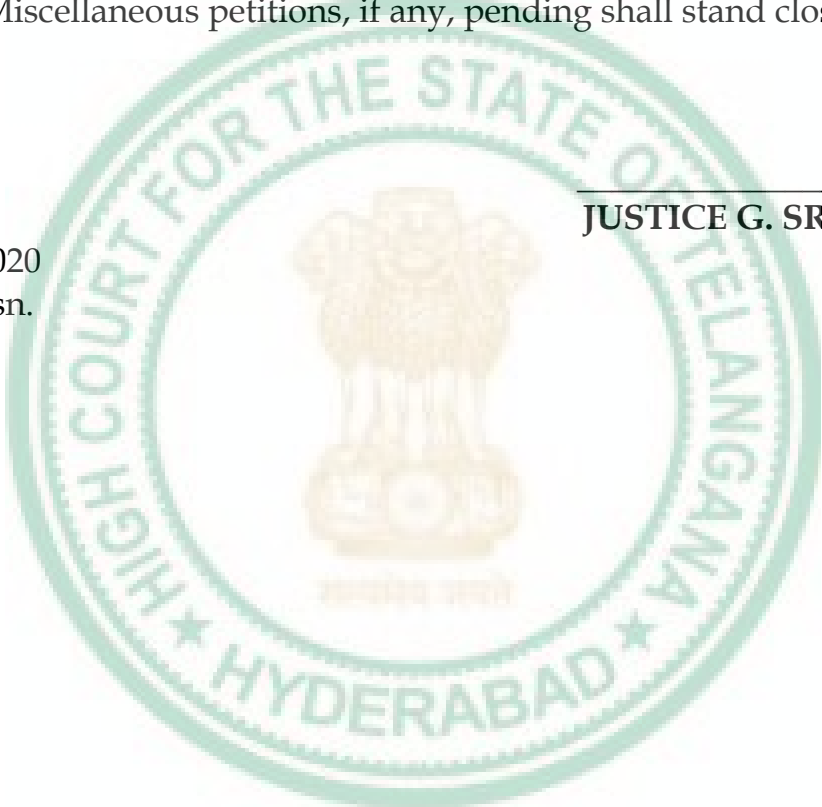
According to the petitioner, after passing the judgment by the trial Court, he came to know that the 1st respondent/complainant filed several cases under Section 138 of the Negotiable Instruments Act, 1881 and out of them, the case which was filed against the said Thirupathi (proposed witness), was dismissed on the ground that the 1st respondent/complainant has no money lending licence. If a new evidence which would have a serious bearing in a case surfaces after the trial Court judgment, that by itself is a sufficient ground for the Appellate Court to take additional evidence. Hence, this Court is satisfied that the petitioner/accused has made out a case for taking additional evidence in the appellate stage under section 391 of Cr.P.C. The appellate Court has not properly adverted to the essential ingredient of Section 391 of Cr.P.C., "if it thinks additional evidence to be necessary". These words in the Section contemplate a wide power to the appellate Court to weed out the infirmities and irregularities. Considering the facts and circumstances of the case, this Court is of the view that in order to render complete justice, it is just and necessary to allow the petitioner/appellant/accused to lead additional evidence.

For the reasons stated above, this Court comes to a conclusion that the petition filed by the petitioner/appellant/accused before the appellate Court seeking to produce additional evidence on his behalf by examining the aforesaid Thodeti Thirupathi so as to prove his claim, deserves to be allowed.

In the result, the Criminal Petition is allowed and the order, dated 08.02.2019 passed in Crl.M.P.No.327 of 2018 in Crl.A.No.5 of 2017 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge at Karimnagar, is set aside. The learned Judge, Family Court-cum-Additional District and Sessions Judge, Karimnagar, is directed to examine the proposed witness viz., Thodeti Thirupati by issuing summons to him.

Miscellaneous petitions, if any, pending shall stand closed.

21.01.2020
gkv/Gsn.


JUSTICE G. SRI DEVI

