

THE HONOURABLE JUSTICE G. SRIDEVI

CRIMINAL REVISION CASE No. 1387 of 2019

ORDER :

1. The present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. aggrieved by the order, dated 28.11.2019 passed in CrI.M.P.No.1664 of 2019 in CrI.A.No.787 of 2016 on the file of the II-Additional Metropolitan Sessions Judge, Hyderabad, wherein and whereunder an application filed under Section 391 of Cr.P.C., to take further evidence or direct it to be taken before the trial Court and to mark certain documents as exhibits in favour of the revision petitioner/accused, was rejected.

2. The facts in issue are as under:

The first respondent herein filed a private complaint against the revision petitioner/accused for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. Vide judgment, dated 22.08.2016, in C.C.No.54 of 2015, the learned IV-Special Magistrate at Hyderabad, convicted the revision petitioner/accused and sentenced him to undergo rigorous imprisonment for a period of one year and to pay compensation of Rs.15.00 lakhs within a period of two months, in default, to suffer simple imprisonment for a period of six months. Aggrieved by the same, the revision petitioner/accused preferred CrI.A.No.787 of 2016 before the II-Additional Metropolitan Sessions Judge, Hyderabad. Pending

appeal, the revision petitioner/accused filed CrI.M.P.No.1664 of 2019 under Section 391 Cr.P.C. to take further evidence or direct it to be taken before the trial Court and to mark the documents i.e., certified copy of plaint and written statement in O.S.No.1149 of 2014 on the file of the IX-Additional Chief Judge, City Civil Court, Hyderabad, as exhibits. The said application was dismissed on 28.11.2019. Challenging the same, the present revision is filed.

3. Learned Counsel for the revision petitioner/accused would submit that the 1st respondent/complainant had suppressed the material fact that he is a stranger to the entire transaction and there is no privity of contract between the revision petitioner/accused and the 1st respondent/ complainant and that the 1st respondent/complainant had filled the blank cheque, which was issued by the revision petitioner/accused in favour of his son towards security, which constitutes a clear breach of trust. It is also stated that the appellate Court is having unfettered powers to allow the application under Section 391 of Cr.P.C. for additional evidence, but the appellate Court dismissed the same by making an observation that the additional evidence application cannot be allowed because the copy of plaint and written statement in O.S.No.1149 of 2014 on the file of the X-Additional Chief Judge, City Civil Court, Hyderabad, is not necessary to adjudicate CrI.A.No.787 of 2016. The appellate Court failed to appreciate the blanket denial made by the 1st respondent/complainant stating that he is not having knowledge

about filing of O.S.No.1149 of 2014, though the Counsels appearing on his behalf in criminal proceedings and on behalf of his son in civil proceedings is one and the same. It is further stated that the appellate Court should have allowed the application filed under Section 391 of Cr.P.C. in the light of the judgment reported in *Brig Sukhjeet Singh MVC v. State of Uttar Pradesh and others*¹ and the decision of the Gujarat High Court in *Jayanti Parshottam Machhi @ Jayanti Parchottam Tandel v. State of Gujarat and another*² wherein the scope of Section 391 of Cr.P.C. has been dealt with and in the said two decisions, the documents sought to be received at appellate stage were held to be relevant and material to decide the appeals and accordingly they were ordered to be received.

4. Learned Counsel for the 1st respondent/complainant submits that the proposed documents have no relevancy in adjudicating the appeal and the 1st respondent/complainant is not a party in the said suit. 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

¹ (2019) Law Suit (SC) 72

² (2015) 4 Crimes 441 (Guj.)

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 material on record placed before the Court would show that the revision petitioner/accused failed to adduce any evidence during the course of trial in Calendar Case. From the impugned order, it is evident that the documents which are sought to be marked are certified copies of plaint and written statement in O.S.No.1149 of 2014 on the file of the X-Additional Chief Judge, City Civil Court, Hyderabad. Admittedly the 1st respondent/complainant is not a party in the said suit and the said suit is

pending between the revision petitioner/accused and the son of the 1st respondent/complainant. If the proposed documents are relevant to prove the defence of the revision petitioner/accused, he can file the same during the course of trial itself. Since the 1st respondent/complainant is not a party to the said suit and the proposed documents have no relevancy to adjudicate the Criminal Appeal, 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 28.11.2019 passed in CrI.M.P.No.1664 of 2019 in CrI.A.No.787 of 2016 on the file of the II-Additional Metropolitan Sessions Judge, Hyderabad, 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

14.02.2020
gkv/Gsn