

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL REVISION CASE No.2767 of 2018

ORDER:

The present Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. aggrieved by the order, dated 10.08.2018, passed in CrI.M.P.No.2025 of 2018 in New C.C.No.116 of 2017 on the file of the XXV Special Magistrate at Hyderabad, wherein an application filed by the 2nd respondent/ *de facto* complainant to receive certain documents was allowed.

As seen from the record, the 2nd respondent/complainant filed CrI.M.P.No.2025 of 2018 seeking to receive certain documents annexed to the petition. The averments in the said petition discloses that the 2nd respondent/complainant filed the above Calendar Case on the premise that the impugned cheques were issued in discharge of legally enforceable liability arising out of an agreement for sale of flat. As the sale agreement in question was not performed, construction of flat did not take place and as the revision petitioners/accused were not discharging their obligation as agreed upon and even started executing another agreement of sale in respect of the very same property to others, the 2nd respondent/complainant,

who was made to part with huge money, compelled to make the complaint to police. Thereafter, the matter was resolved and the revision petitioners/accused have executed a document dated 10.08.2016 to the effect that sale agreement was cancelled and that cheques were issued. It is stated that the 2nd respondent/complainant did not file the said document as it was not disputed at any time. Further, while DW.1 was being cross-examined, several false statements were made deliberately and to falsify the same, the present documents are required to be filed. The revision petitioners/accused themselves have executed the document cancelling the agreement and have issued cheques with additional amount that was agreed to be paid to the 2nd respondent/complainant and those cheques were bounced on due presentation. As such, the documents in question are required to be confronted to D.W.1. The said documents were not readily available as the same were mixed up with the other documents and, therefore, the same could not be filed earlier or confronted to DW.1 on the day of cross-examination. The said documents will prove the falsity of defence of DW.1 and prove the case of the 2nd respondent/complainant.

A counter came to be filed by the revision petitioners/accused denying the execution of the documents in

question. It is contended that the copies of the alleged documents were not served on the revision petitioners/accused. It is further contended that after cross-examination of P.W.1 and D.W.1, the documents in question were filed only to fill up the lacunae and the documents sought to be received are created only for the purpose of this case. It is also contended that the revision petitioners/accused never issued any cheque in favour of the 2nd respondent/complainant towards discharge of any liability. It is further contended that the 2nd respondent/complainant failed to pay the sale consideration as per the schedule of payment fixed in the agreement of sale, for which the revision petitioners/accused have sustained huge loss. It is further contended that the Counsel for the 2nd respondent/complainant had cross-examined D.W.1 at length, but during the entire cross-examination, the Counsel for the complainant had not even put the suggestion to D.W.1 for execution of cancellation of sale agreement or receipt or any document.

After considering the rival submissions, the learned Magistrate allowed the said petition and that the documents in question were received subject to proof and relevancy on payment of costs of Rs.1000/-. Challenging the same, the

present Criminal Revision Case is filed by the revision petitioners/accused.

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

It has been submitted on behalf of the revision petitioners/accused that the prayer in the application is to recall D.W.1 for the purpose of further cross-examination, but whereas in the impugned order, the Court below directed to receive documents subject to proof and relevancy and hence the same is liable to be *set aside*. It is further submitted that when the case was posted for arguments, the petition under Section 311 Cr.P.C. was filed by the 2nd respondent/complainant to recall D.W.1 for further cross-examination and to receive the additional documents, without mentioning of the said documents in the complaint, legal notice, chief evidence and cross examination or without putting any suggestion to D.W.1 during the course of cross-examination and, therefore, the impugned order is liable to be set aside.

On the other hand, learned Counsel for the 2nd 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. At the time of hearing, the learned Counsel for the 2nd respondent/complainant also not pressed the prayer with regard to recall of D.W.1 for further cross-examination and made an endorsement to that effect.

The Karnataka High Court in *B.L.Udaykumar and others v. State of Karnataka*¹ observed as under:

“12. As could be seen from the above sub-section (3), mandates the Magistrate to take all such evidence as may be produced in support of the prosecution. The use of the language “all such evidence” in the sub-section means that the court is required to take or receive all such evidence which the prosecution may produce in support of its case. Having regard to the wide language used in the section, the expression “all such evidence” cannot be given a restrictive meaning so as to hold that only such evidence as relates to those of persons who have been examined by the police or only the documents collected during investigation could be produced before the Court. To read the section, in such a restricted manner would amount to reading into the sub-section something which is not there. Even otherwise “evidence” in strict sense means oral and documentary evidence. As defined in Section 3 of the Evidence Act “Evidence means and includes (1) all statements which the Court permits or requires to be

¹ 2018 Cr.L.J. 3925

made before it by witnesses, in relation to matters of fact under inquiry, such statements are called oral evidence; (2) (all documents including electronic records produced for the inspection of the Court) such documents are called documentary evidence.”

13. Thus it is clear that sub-section (3) of Section 242 casts a mandatory duty on the Magistrate to take all such evidence as may be produced in support of the prosecution. The word “produced” in sub-section (3) also cannot be given a restrictive meaning to hold that only the materials collected during investigation could be permitted to be produced in evidence. Such a construction would defeat the very purpose of trial. If the main object of criminal trial is to discover truth, necessarily all and every piece of evidence which could help the Court to arrive at a just decision should be allowed to come on record. Therefore, it is immaterial whether the “evidence” sought to be produced during trial was either collected in the course of investigation or subsequent thereto. Section 91 Cr.P.C. no doubt empowers the court or the officer in-charge of the Police Station to ensure the production of any ‘document or other thing’ ‘necessary or desirable’ for the purpose of any investigation, enquiry or other proceedings by issuing summons or written order to the person in whose possession or power such document or thing is; but Section 242 (3), Cr.P.C. requires the court to take all such evidence which the prosecution desires to produce including the documents which are not mentioned in sub-section (5) of section 173 Cr.P.C. subject of course furnishing to the accused a copy thereof and providing him a reasonable opportunity to meet the same. The

only safeguard or restriction that could be thought of in view of the provisions of the Evidence Act is that such evidence must relate to the matters of fact in enquiry. In other words, as long as the proposed evidence, either oral or documentary, is relevant and in support of the prosecution case, the Magistrate cannot refuse to receive it."

"It was further observed that, it is also relevant to note that a duty is cast on the Public Prosecutor conducting the trial to produce all evidence relevant to the determination of the guilt or innocence of the accused. Therefore, it goes without saying that even the Public Prosecutor conducting the trial owes a duty to produce before the court all evidence in support of the prosecution. The Public Prosecutor therefore cannot withhold any relevant piece of evidence which he finds it necessary for fair trial of the case. That being the position of law and the mandate contained in Section 242 (3) of Cr.P.C., I do not have any hesitation to hold that the criminal court conducting the trial is bound to receive all the evidence produced by the prosecution irrespective of the fact whether the said evidence or documents were part of the charge sheet placed before the Court or not. It was also observed that "this Section, therefore, cannot be construed to mean that prosecution is debarred from producing additional evidence in support of its case during trial as canvassed by the petitioners. The language of section 242 (3) of the Cr.P.C. is wide enough to invest power in the Magistrate to take all the evidence produced by the prosecution in support of its case."

In the present case, the defence of the petitioners/accused was revolving around the cancellation of sale agreement. Hence, the 2nd respondent/complainant filed certain documents, to be confronted to D.W.1, who is one of the signatories to the document. Considering the position of law laid down in the aforesaid decision of Karnataka High Court and having regard to the facts and circumstances of the case, I am of the considered view that if the said documents are received, no prejudice would be caused to the defence as adequate opportunity would be available to the petitioners/accused to cross-examine the witnesses and to lead rebuttal evidence. Hence, I do not find any irregularity or illegality committed by the trial Court in receiving the documents filed by the 2nd respondent/complainant.

Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE G.SRI DEVI

14.02.2020
gkv/Gsn

