

D/L 65
March 14,
2022
Bpg.

C.R.R. No. 1100 of 2017
With
CRAN 1 of 2017 (Old CRAN 2090 of 2017)
(Via Video Conference)

In Re: An application under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973;

Shri Ashok Das
Versus
The State of West Bengal & Anr.

Ms. Atulya Sinha.
...for the petitioner.

Mr. Tapas Kumar Sinha.
...for the opposite party no.2.

The present revisional application has been preferred challenging the order dated 14.12.2016 passed by the learned Sessions Judge, Cooch Behar in Criminal Appeal No.17 of 2015 wherein the learned appellate court was pleased to dispose of the appeal with the following observations:

“ So, this Court is of the view that here, for two reasons, say, to unearth the real truth as to whether the cheque (Ext.1) and the loan agreement (Ext.9) bear the signatures of the accused person or not and to give the accused person to rebut the presumption and to defend herself, these two documents should be sent to the Handwriting Expert for comparison with the admmissive signatures of the complainant as well as the accused person. So, this Court is of the view that this application should be allowed and this loan agreement (Ext.) and the subject cheque (Ext.1) and the Vokatnama both used

by the both the complainant and the accused person in this appeal should be sent to the Handwriting Expert to compare as to whether the signatures of Arati Roy (Barman) on the cheque, loan agreement and with the Vokatnama used by Arati Roy (Barman) in this appeal are of same person or not and also to make a comparison of the signatures of the complainant Ashok Das appearing on the Vokatnama used in this appeal and such comparison shall be made at the cost of the appellant herein and the appellant herein is directed to deposit the cost as would be estimated by the competent authority and the appellant shall bear the cost of Special Messenger to send the aforesaid documents to the Forensic Science Laboratory and to bring the result of such comparison back to this Court.”

Ms. Atulya Sinha, learned advocate appearing for the petitioner submits that the present prayer was advanced at a belated stage and was a ploy to delay the proceedings. The subject matter was elaborately dealt with and the learned trial court arrived at his own conclusion. At no point of time the opposite party raised any objection regarding the admissibility of the documents nor any cogent ground was pressed before the learned trial court for the appellate court to pass an order directing for collection of evidence.

Mr. Tapas Kumar Sinha, learned advocate appearing for the opposite party no.2 contradicts the submission of the petitioner and submits that in the present case before the learned trial court the foundation was laid wherein the signature in the cheque was disputed. Learned advocate further submits that the loan

agreement was presented at a belated stage after the defence evidence was closed.

Learned advocate also relied upon the decision of the Hon'ble Apex Court in the case of **Brigadier Sukhjeet Singh (Retired) MVC Vs. State of Uttar Pradesh & Ors.** reported in **(2019) 16 SCC 712**. The emphasis was regard to paragraph nos.23, 24, 26 and 29 of the said judgment.

Each case is based on different foundation of fact and the referred judgment does not also spell out the guidelines under Section 391 of the Code of Criminal Procedure and when it is to be applied. The reference is that even at a belated stage the application under Section 391 of the Code of Criminal Procedure cannot be denied to an appellant.

I have perused the judgment delivered by the learned trial court as well as that of the learned appellate court. In this case, the trial was for offences under Section 138 of the Negotiable Instruments Act. The prosecution has number of documents. There was an objection obviously relating to the signature at the time when the cheque was being exhausted as has been submitted by the learned advocate for the accused/opposite party no.2. The defence also relied upon certain documents which included amongst others, the G.D. Entries and the communication made to the bank.

I have been unable to assess from the available records which have been enclosed in the revisional application as to when and in what manner Exhibit 9 was brought in evidence before the

court. The learned lawyers appearing could not satisfy whether it was by way of recalling PW1. It has been observed in inner page 7 of the judgment of the trial court that the loan agreement (Exhibit 9) was brought in evidence after the defence case was closed.

Having regard to the totality of the circumstances, I am of the opinion that a case for interference with the order of the appellate court is made out. Accordingly, the judgment and order dated 14.12.2016 passed in Criminal Appeal No.17 of 2015 is set aside. The application under Section 391 of the Code of Criminal Procedure is allowed to the limited purpose that the cheque which has been marked as Exhibit 1 in the complaint case and the signature of which was 'objected to' and as prayed for by the accused should be allowed to be corroborated or denied by the banking authorities having the custody of the signature or the bank maintaining the account in respect of the dishonoured cheque.

Accordingly, the authorized representative of the concerned State Bank of India would bring the records relating to the signature kept with the banking authorities having possession of the signature of the accused.

So far as Exhibit 1 is concerned, the case should be remitted back to the learned Magistrate for the limited purpose of assessment of the signature by the banking authority and thereafter the records should be sent back to the appellate court. The appellate court after considering the evidence which has been adduced under Section 391 of the Code of Criminal Procedure would check regarding mode and manner in which Exhibit 9 was

brought on record and thereafter decide on the merits of the appeal. The exercise before the learned Magistrate should be completed within a period of 60 days from the date of communication of this order. The learned trial court would thereafter send back the records to the learned appellate court. The learned appellate court on receipt of the records thereafter would consider the evidence available and decide the appeal on merits of the case. The learned appellate court on receipt of the evidence recorded under Section 391 of the Code of Criminal Procedure would dispose of the appeal on merits in accordance with law.

It has been informed that the next date has been fixed on 6th May, 2022. The learned appellate court would keep the hearing of the appeal in abeyance till the Magisterial records are returned back.

With the aforesaid observations, CRR 1100 of 2017 is disposed of.

The opposite party no.2 will be at liberty to pray for interim order during the period the appeal is pending and evidence is being recorded by the learned trial court.

Pending application, if any, is consequently disposed of.

Interim order, if any, is hereby vacated.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)

