

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 1387 of 2018

With

CRAN 1 of 2019

(Old No. CRAN 1523 of 2019)

Sabyasachi Chatterjee

Versus

The State of West Bengal & Anr.

For the petitioner	:	Mr. Kaushik Gupta Mr. Anirban Tarafder Ms. Nipa Sarkar Ms. Samriddhi Majumder Advocates
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For the opposite party no. 2	:	Mr. Anirban Mitra Advocate
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Lastly heard on	:	11.07.2022
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Judgment on : 29.07.2022

Jay Sengupta, J.:

1. This is an application challenging the orders passed in Complaint Case No. C/45 of 2010 under Section 138 of the Negotiable Instruments Act, 1881 including the order dated 07.12.2017 passed by the Learned Metropolitan Magistrate, 12th Court, Calcutta thereby allowing the complainant/ opposite party to adduce further evidence on her behalf at the stage of argument.

2. The petitioner is the accused in this case while the opposite party no. 2 is the complainant. The opposite party no. 2 initiated a proceeding in 2010 under Section 138 of the Negotiable Instruments Act for the purported dishonour of a cheque of an amount of Rs. 20 lakhs. After a considerable delay, trial started. On a date fixed for argument i.e., on 03.08.2017, the private opposite party filed an application for purportedly adducing further evidence. It was her claim that a trade licence of the complainant's concern ought to be exhibited during trial as the same was a public document. The prayer was allowed and this became the bone of contention between the two sides.

3. Learned counsel, appearing on behalf of the petitioner, submitted as follows. First, the application was not in form. Instead of praying for re-examination of a witness, the complainant prayed for marking a document as exhibited on the ground that it was purportedly a public document. The same

could only be resorted to by invoking Section 294 of the Code. In fact, the complainant did not pray for re-examination or for exercise of powers vested under Section 311 of the Code. The petitioner's prayer for marking a public document as an exhibit at the stage of argument was beyond the scope of such application. Although a Court had ample powers to intervene under Section 311 of the Code even at a mature stage, the impugned order could not be sustained as there was no finding or discussion as to why adducing of such evidence was essential for arriving at a just decision. The complainant's intention was only to fill up the lacuna in this case, which was not permissible in law. Reliance was placed on the decision of the Hon'ble Apex Court in *Rajaram Prasad Yadav vs. State of Bihar & Anr.*, 2013 (4) Supreme 621. More than anything else, the accused had already disclosed his defence and by effective cross-examination had elicited doubts in the mind of the Court about the prosecution case. After all these, allowing a prayer to mark documents as exhibits would not serve the purpose of justice.

4. Learned counsel appearing on behalf of the complainant/ opposite party submitted as follows. The complainant filed an application for marking of trade licences of his enterprise for different years as exhibits under Section 74 of the Evidence Act. It was settled law that under Section 311 of the Code, a Court could at any stage of enquiry, trial or other proceeding under the Code summon any person as witness or examine any person though not summoned as witness, recall, re-examine any such person if his evidence appeared to be essential for

the just decision of the case. So far as the nomenclature of the application was in question, mere non-mentioning of a correct provision of law under which an application would be filed was not fatal to the said application. On this, reliance was placed on a decision of the Hon'ble Supreme Court in Pruthvirajsinh Nodhabha Jadeja (D) by Lrs. Vs. Jayeshkumar Chhakaddas Shah & Ors.. The learned Trial Court had also allowed the accused to cross-examine the complainant after recall or re-examination. So there was no question of any prejudice to the defence. In fact, the particular document was referred to earlier inasmuch as a question asked in the cross about whether the concern had trade licence for the period. It was answered that the same had not been filed then. Therefore, there was no harm in praying for exhibiting such document at a subsequent stage. It was not a new document that was being foisted up from nowhere.

5. I heard the learned counsels appearing on behalf of the petitioner and the complainant/opposite party and perused the revision petition.

6. First, it is settled law that nomenclature of an application is not important. What is important is the content of such application. On this, reliance may be placed on Pepsi Food Case, (1998) 5 SCC 749 and Pruthvirajsinh Nodhabha Jadeja (D) by Lrs. (supra).

7. In the present case, it is amply clear that the application filed by the complainant/opposite party was meant for the recall of a witness and for the consequent marking of a document being a trade licence/s to be produced

during such re-examination as exhibit. It is true that the application was not drafted properly. However, in the interest of justice and to avoid further delay, it would be fair and reasonable to treat such application as one for recalling of a witness. In fact, the learned trial Court comprehended this correctly and treated the application as it should have been treated in the given circumstances.

8. Secondly, there is no question of filling up a lacuna in the prosecution case. The complainant only wants to exhibit its trade licence/ licences. The issue appears to have been referred to during the cross-examination of the complainant. When the complainant was asked during cross whether any trade licence was produced, the complainant answered in the negative. However, the complainant never said that the concern did not have any trade licence. Therefore, if the complainant, at a later stage, wanted to produce such trade licence, it cannot be said that a lacuna was being filled up or the prosecution was trying to alter its case.

9. Besides, the document in question is one of sterling quality, is purportedly a public document and apparently quite relevant in the present case.

10. Furthermore, there will be no question of prejudice being caused to the accused as the defence is to be allowed to cross-examine the witness on this point.

11. In view of the above, I do not find any illegality in the impugned order.

12. Accordingly, the revisional application is dismissed and the connected application stands disposed of.

13. However, there shall be no order as to costs.

14. The learned Trial Court is requested to conclude the proceeding as expeditiously as possible without granting any unnecessary adjournment to any of the parties by keeping in mind the statutory stipulation regarding early disposal of a proceeding under Section 138 of the Negotiable Instruments Act.

15. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)

P. Adak