IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4436 OF 2021

Yogendra Sharada Singh And Anr. ...Petitioners

Versus

Chetan Anand Lamne And Anr. ...Respondents

WITH

CRIMINAL WRIT PETITION NO. 4437 OF 2021

Yogendra Sharada Singh And Anr. ...Petitioners

Versus

Kishor Kashinath Lad And Anr. ...Respondents

Mr. Ashok B. Tajane, Advocate for Petitioner.
Mr. Manish Rai a/w Mr. Santosh A., Advocate for Respondent No.1.
Mr. S. R. Agarkar, APP for Respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 24th AUGUST, 2022.

P.C. :-

1. Criminal Writ Petition No. 4436 of 2021 pertains to C.C. No.2868/SS/2016 filed by Respondent No.1 for offence punishable under Section 138 of Negotiable Instruments Act (for short 'N.I. Act'). The Petitioners were arraigned as Accused Nos. 1 and 2. Vide Judgment and Order dated 26th October, 2018 passed by learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai the Petitioner No.1 was convicted for offence under Section 138 of the

N.I. Act and sentenced to suffer simple imprisonment for three months and to pay fine of Rs. 10 lakhs. The Accused No.2/Petitioner No.2 was acquitted for the offence under Section 138 of the N.I. Act. The Petitioners preferred Criminal Appeal No. 794 of 2018 before the Sessions Court at Mumbai challenging the Judgment of conviction. The Appeal is pending. The Petitioners preferred an Application under Section 391 of Cr.P.C. to file additional evidence. The said Application was rejected vide Order dated 24th September, 2021.

2. Criminal Writ Petition No.4437 of 2021 pertains to C.C. No.2869/SS/2016. The said complaint was filed by Respondent No.1 for an offence under Section 138 of the N.I. Act. Vide Judgment and Order dated 26th October, 2018, the Accused No.1 is convicted for the offence punishable under Section 138 of the N.I. Act and sentenced to suffer simple imprisonment for three months and to pay fine of Rs. 10 lakhs. Accused No.2 was acquitted for the offence punishable under Section 138 of the N.I. Act. The Judgment of conviction has been challenged before the Sessions Court at Mumbai by preferring Criminal Appeal No.795 of 2018 by Petitioner No.1 During the pendency of Appeal the Petitioner No.1 preferred an Application under Section 391 of Cr.P.C. for additional

evidence. The said Application was rejected vide Order dated 24th September, 2021.

3. The case of the complainant in C.C. No. 2868/SS/2016 is as follows :-

i. The complainant Chetan Lamne was working as Manager in the employment of Accused No.2 company. The Accused No.1 is the Managing Director. The business of Accused No.1 is cargo shipping. The complainant was in employment with Accused No.2 till may 2016. The salary of the complainant for a period of seven months from November 2015 till May 2016 was Rs.14.25 lakhs. It was not paid to him and his colleague Kishor Kashinath Lad.

ii. Issue of salary was attempted to be resolved through mediator. The Accused No.1 agreed to pay Rs.10.25 lakhs to complainant in full and final settlement on or before 30th June, 2016.

iii. The complainant accepted the offer given by Accused. On 10th June, 2016, Accused No.1 transferred Rs.75,000/- to account of complainant as part payment. Thereafter amount of Rs.50,000/- was transferred by NEFT to complainant. The Accused No.1 issued cheque from his account bearing No.328798 dated 30th June, 2016 to the tune of Rs.5,00,000/- in favour of complainant. Cheque was dishonoured on 1st July, 2016 with remarks "funds insufficient". Accused tendered apology and agreed to pay as per letter dated 4th July, 2016 signed by Accused No.1. Accused No.1 assured the complainant that the cheque would be honoured if presented again. Cheque was presented again. It was dishonoured on 5th July, 2016. Notice was issued. It was not claimed by Accused No.1 complaint filed.

4. The case of the complainant in C.C. No.2869/SS/2016 is as follows:-

i. Complainant Kishor Lad was working as Manager in employment of Accused No.2 company.

ii. Salary of complainant aggregating Rs.14.25 lakhs was due from Accused.

iii. Issue of salary was negotiated through mediator. Accused No.1 agreed to pay Rs.10.25 lakhs to complainant.

iv. Accused No.1 transferred Rs.75,000/- to complainant on 10th June, 2016 and Rs.50,000/- by NEFT to complainant.

v. Accused No.1 issued cheque dated 30th June, 2016 for Rs.5,00,000/- in favour of complainant. It was dishonoured on 1st July, 2016. Accused tendered apology and agreed to pay as per letter dated 4th July, 2016 signed by Accused No.1. Accused assured that cheque would be cleared if presented again.

vi. Complainant presented cheque again. It was dishonoured with remarks “Funds insufficient”. Notice was issued. Accused No.1 did not claim. Complaint filed.

5. The Petitioner filed applications in respective appeals for additional evidence by contending that the complainant has intentionally suppressed certain vital documents from trial Court. Complainant was co-promoter had conspired with entire workforce against appellants and directed business of company to a parallel concern wherein he had substantial interest and created conflict of interest with appellants company. The complainant projected himself as Manager of company. The appellants aer in possession of vital documents i.e. copy of DIR-II obtained from Registrar of

companies, memorandum and Articles of Association, acknowledged copy of police complaint, legal notice etc. The said documents are relevant for just decision in appeal. The appellants inadvertently could not produce the same at trial. The appellant seek permission for filing on record certified copy of ROC certificate DIR-II showing resignation of complainant, MOA, written complaint to police station,. The application was filed on 15th July, 2019, alongwith application the appellant filed affidavit of additional evidence. The complainant in both appeals filed objection to permission for additional evidence. It was contended that the complainant was not having knowledge of DIR-II notice regarding his resignation as Director submitted in ROC. This is incomplete document. No challan is attached alongwith DIR-II for payment of government fees. Resignation letter and Board Resolution are not attached with DIR-II. Accused being Managing Director removed complainant by filing DIR-II. It was within his knowledge to lead defence evidence. The Accused formed the company on 29th August, 2008. It was within his knowledge about existence of documents. Appellant did not make efforts to lead the evidence before trial Court. The Accused lodged the complaint with local police station after the Judgment alleging that blank cheques were stolen etc. Cheques were dishonoured in 2016.

complaint is filed in 2018.

6. Learned Advocate for the Petitioners in both the Petitions submitted that the learned Sessions Judge has mechanically rejected the Application under Section 391 of Cr.P.C.. The Petitioner could not produce the additional evidence before the Trial Court. The original complainant did not inform the Trial Court about the resignation from the Petitioner-Company. The Trial Court had no occasion to consider the aspect of tenure of Respondent with Petitioner-Company. The Complainant willfully withheld the information such as M.O.A., D.I.R.-11, resignation letter, etc. The complainant suppressed vital documents. The onus to prove that the Respondent had rendered valuable service between November-2015 to May-2016 is on the Respondent. By way of additional evidence the Petitioner proposes to expose the suppression of material facts by bringing on record vital documents. Learned Sessions Judge has failed to appreciate the scope of Section 391 of Cr.P.C..

7. Learned Advocate for Petitioner has relied upon decision in the case of *Brigadier Kukhjeet Singh (Retired) MVC V/s. State of Uttar Pradesh And Others, (2019) 16 SCC 712.*

8. Learned Advocate for Respondent submitted that the Application under Section 391 of Cr.P.C. has been rightly rejected by the learned Sessions Judge. The Respondents were the employees of Petitioner No.2 wherein the Petitioner No.1 is the Managing Director of Petitioner No.2. There was settlement and it was decided to pay Rs. 10.25 lakhs against which Petitioner No.1 had issued a cheque of Rs. 5 lakhs and made R.T.G.S. transfer of Rs. 1.25 lakhs. The cheque was deposited twice. On both the occasions it was dishonored. The Petitioner is relying upon certain documents. The documents were in custody of the Petitioner. The Trial Court convicted the Petitioner No.1. To create false evidence the Petitioner No.1 filed a police complaint against Respondents on 4th December, 2018 after 40 days of the trial Court's Judgment. The resignation letter dated 28th April, 2015 is forged document. Signature of Respondent has been forged. The resignation letter of Respondent Kishor Lad is forged. His signature has been forged by Petitioner No.1. At the time of filing application seeking permission to file additional evidence, the Petitioner No.1 has not given any ground as to what prohibited him from producing the documents before the trial Court, even though documents were in his custody. Police complaint was filed after the Judgment of conviction.

9. Section 391 of Cr.P.C. permits additional evidence. The powers can be exercised if the Court finds that certain evidence is necessary in order to enable the Court to give correct findings or there is likelihood to failure of justice. The grievance of the Petitioner is that the Complainant has suppressed material facts from the Court that he was Director of the Company and having conflict in interest the Petitioner is seeking permission to bring on record certain documents.

10. The learned Sessions Judge while rejecting the Application has noted that document such as D.I.R.-11 placed on record shows that the original Complainant was a Director of accused No.2-Company and he resigned on 31st May, 2015. On perusal of the complaint it appears that the complainant in the capacity of Manager of accused No.2-Company claimed for salary for the period of seven months i.e. November-2015 to May-20016. Assuming for the sake of moment that the Complainant was the Director of Accused No.2-Company. As per D.I.R.-11 he resigned on 31st May, 2015. The cheques were to be issued towards the arrears of salary for the period from November-2015 to May-2016. If the original complainant has resigned on 31st May, 2015 it has no relevancy with with the salary derived being Manager for the

period from November-2015 to May-2016. The Petitioner-Accused No.2 being a company must have knowledge about a directorship of original Complainant from the year 2008 to 2015. Whatever documents are now tried to be placed on record as an additional evidence were well within the knowledge of Petitioners. The provision of Section 391 of Cr.P.C. cannot be invoked to remedy the negligence or latches on the part of Petitioners. The documents do not seem to have any impact on the facts and decisions of the case. The company was acquitted by trial Court. However, the appeal challenging conviction is also preferred on behalf of company. If the Accused No.1 was Managing Director of company, he should have knowledge of Directors who had resigned. He cannot feign ignorance. Application under Section 391 Cr.P.C. cannot be filed for filling up lacuna. In the case of *Brigadier Kukhjeet Singh (Retired) MVC V/s. State of Uttar Pradesh And Others (supra),* it was observed that object of Section 391 is to secure ends of justice. The aim should be to reach to truth and justice. There is no reason to differ from the view expressed by the Sessions Court while rejecting the Application. No case is made out to interfere in the impugned Orders. Hence, both the Petitions are required to be dismissed.

ORDER

. Criminal Writ Petition Nos. 4436 of 2021 and 4437 of 2021 are rejected and disposed of accordingly.

[PRAKASH D. NAIK, J.]