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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.03.2022

PRONOUNCED ON : 10.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.R.C.NO.228 OF 2022

AND

CRL.M.P.NO.2345 OF 2022

Sri.A.Dinesh Kumar

... Revision Petitioner/
Appellant

Vs.

Sri.G.Ganesan

... Respondent/
Respondent

Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, against the order dated 14.12.2021 made in CMP No.19618 of 2021 in Criminal Appeal No.103 of 2020 on the file of the learned XVIII Additional Judge, City Civil Court, Chennai.

For Revision Petitioner : Mr.B.R.Sankara Lingam

For Respondent : Mr.G.Mahendran

O R D E R

The present Criminal Revision Case has been filed to call for the records and set aside the order dated 14.12.2021 in Crl.M.P.No.19618 of 2021 in Crl.A.No.103 of 2020, on the file of the learned XVIII Additional Sessions Judge, City Civil Court, Chennai, by allowing this Criminal Revision Case.

2. The petitioner herein is the accused in CC No.3997 of 2017, wherein the respondent filed a private complaint as against this petitioner alleging that the petitioner is liable to be convicted under Section 138 of Negotiable Instruments Act, 1881. After elaborate trial, by judgment dated 25.02.2020, the



learned Magistrate found the petitioner guilty and convicted the petitioner to undergo simple imprisonment for one year and also directed to pay compensation of Rs.12 Lakhs to the respondent.

3. Therefore, petitioner preferred the petition mentioned appeal, wherein he challenged the judgment dated 25.02.2020. During the time when the appeal is pending before the learned XVIII Additional Sessions Judge, City Civil Court, Chennai, the petitioner filed an petition in CrI.M.P.No.19618 of 2021 under Section 391 of Cr.P.C wherein he prayed to take additional evidence by cross examining the respondent side evidence.

4. Resisting the said application, the respondent herein by filing a counter affidavit state that before the trial court after examining him as PW1 on the side of the petitioner, a lengthy cross examination was conducted and while at the time the petitioner was put under Section 313 Cr.P.C examination, nothing has been stated, as there was any document available to show his innocence. When at the time the case was posted for defence side evidence, the petitioner filed an application under Section 91 of Cr.P.C., through which he called for the statement of bank accounts maintained by the respondent with the State Bank of India, Royapuram Branch and Bank of India, Washermenpet Branch, as well as the Lease Agreement entered with the respondent-tenant, title deed of the respondent property, Memorandum of Deposit of Title Deed executed by the respondent in favour of M/s.Dhanlakshmi Srinivasan Chit Funds (P) Limited and Receipt Deed in favour of the respondent. After receipt of the said application, the respondent has also voluntarily come forward and furnished all the said documents before the trial Court as called for by the petitioner herein.

5. Even after the receipt of the said documents, the petitioner filed a reopen and recall petition under Section 311 Cr.P.C. seeking permission for further cross examination of the respondent. The said application has also been allowed. Later through the respondent, the above referred six documents were marked by the petitioner as Ex.D1 to Ex.D6. Only thereafter, after a full-fledged trial, the learned Magistrate has pronounced the judgment, wherein the petitioner was convicted as above.

6. Heard Mr.B.R.Sankara Lingam, learned counsel appearing on behalf of the petitioner and Mr.G.Mahendran, learned counsel appearing on behalf of the respondent and perused the materials available on record.

7. Before the lower appellate Court, the petitioner being the accused filed a petition under Section 391 of Cr.P.C., for



adducing additional evidence by way of cross examining the respondent. No doubt, under Section 391 Cr.P.C., the appellate Court may either take evidence itself or direct it to be taken by the trial Court.

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8. The primary object of Section 391 of Cr.P.C., is the prevention of guilty man's escape through some careless or ignorant proceedings before a Court or vindication of an innocent person wrongfully accused. Where the Court through some carelessness or ignorance has omitted to record the circumstances essential to elucidation of truth, the exercise of powers under Section 391, is desirable. In otherwise, Section 391 of Cr.P.C. does not provide that the additional evidence can be taken only if it favours the defence and not if it favours the prosecution.

9. Here it is a case, in the petition filed by the petitioner, he has not stated the details of additional evidence to be taken through the respondent. In this occasion, on going through the averments found in the counter affidavit, the respondent has clearly narrated the entire things and the same would reveal the fact that before the trial Court itself the petitioner utilised every opportunity for the purpose of proving his case. Even after utilising all the opportunities, without mentioning the details of the documents, which are all necessary to show his innocence, the petitioner herein filed this application, which shows that the petitioner has attempted to prolong the proceedings. Additional evidence may be necessary not because it would be impossible to pronounce the judgment, but, there will be failure of justice, without it.

10. Here it is a case, that there was an inadvertence in producing the document which are necessary for deciding the issue. The lower appellate Court has also observed that the defence raised by the accused has been extensively cross examined before the trial Court and opportunities were also given for cross examination. In the said circumstances, the reasons stated by the petitioner for allowing this revision is not at all having any merits and accordingly, this Criminal Revision Case, is dismissed. Consequently, the connected Criminal Miscellaneous Petition, is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

The XVIII Additional Judge,
City Civil Court,
Chennai.

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+lcc to Mr.G.Mahendran, Respondents, Advocate, S.R.No.16028

Cr1.R.C.No.228 of 2022

NR(CO)
RLP(21/03/2022)