



CrI.O.P.No.261 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	08.08.2023
Pronounced on	11.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.O.P No.261 of 2023
and
CrI.M.P.No.2402 of 2023

C.M.Amarajeeva

...Petitioner

vs.

A.N.Rajendran,
Rep by Power of Attorney,
K.Anbuchezhian.

...Respondent

PRAYER:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the orders dated 09.11.2022 in CrI.M.P.No.22505 of 2021 in C.A.No.55 of 2021 and CrI.M.P.No.22506 of 2021 in C.A.No.56 of 2021 of the learned XXI Additional Sessions Judge, Chennai and consequently, direct that the petitions be disposed on merits.

For Petitioners : Mr.G.R.Hari
Mr.I.Pravin Kumar



CrI.O.P.No.261 of 2023

For Respondent : Mr.R.S.Mangalakumar
Mr.R.Raja Rajeshwara Pandian

ORDER

This criminal original petition has been filed against the common order passed by the Court below in CrI.M.P.No.22505 of 2021 in C.A.No.55 of 2021 and in CrI.M.P.22506 of 2021 in C.A.No.56 of 2021, dated 09.11.2022, dismissing the application filed by the petitioner under Section 391 of CrPC read with Section 311 of CrPC to bring in additional evidence by examining PW1.

2. The respondent filed two complaints against the petitioner in C.C.Nos.1929 and 1931 of 2017 before the trial Court for the offence under Section 138 of the Negotiable Instrument Act, 1882. The trial Court by judgment dated 08.02.2021 convicted the petitioner in both the complaints for the offence under Section 138 of the Negotiable Instrument Act, 1882 and imposed sentences. Aggrieved by the same, the petitioner had filed two appeals in Criminal Appeal Nos.55 and 56 of 2021 before the Court below. During the pendency of the aforesaid appeals, individual applications came to be filed in both the appeals under Section 391 of CrPC for adducing additional evidence.



CrI.O.P.No.261 of 2023

Those applications were dismissed by the Court below through a common order and aggrieved by the same, this criminal original petition has been filed before this Court.

3. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

4. The petitioner, while filing the applications, has given the following reasons and for proper appreciation, the same is extracted hereunder:

“3. The Petitioner/appellant submits that the above relied documents are very essential for reveal the true fact and transactions between the petitioner/appellant and respondent/complainant. The above said documents are admittedly connection with this transaction, the adduce the additional evidence and marking the above said relied documents through the cross examination of PW-1(K.Anbucheziyan) is essential to just decision of this case.

4. The Petitioner/appellant submits that the above said documents are unable produced before the trial court for unavoidable circumstance and now filling this documents for marking through cross of PW-1 (K.Anbucheziyan) prove the defence case through him and the petitioner/appellant have no other alternate remedy except filing this petition this stage.



The petitioner/appellant was not produced the documents before the trial Court is neither wilful nor wonton.

5. The Petitioner/appellant further submits that the petitioner/appellant want to establish the fact that the above said relied documents will clearly disprove the statements made by the respondent. There is no prejudice will be caused to the respondent, while permitting the petitioner to mark these documents through cross of PW-1(K.Anbuezhayan), the opportunity always open for the respondent to question the relevancy and admissibility of these documents. If this petition not allowed, the petitioner/appellant have missed the opportunity to effectively defend himself in the case.”

5. The petitioner wanted to mark the following documents by recalling PW1 and by cross-examining him:

“i) The statement of account Syndicate Bank A/c No.60491010000480 M/s V.P Foundation from 01.01.2014 to 18.12.2015, the payment made to the respondent/complainant.

ii) The Registered Sale Deed Documents No.1783/2016 to 1788/2016 dated 21.01.2016 in favour of Respondent/Complainant executed by the petitioner/appellant.

iii) The ledger account of Respondent/Complainant for cash payment received from Petitioner/appellant from 01.02.2015 to 2016& Cash Voucher,



CrI.O.P.No.261 of 2023

iv) The Inspector Of Police, Central Crime Branch, EDF-II, Team-III, Vepery, Chennai-600 007, close report complaint given by the Respondent/Complainant against Petitioner/appellant.

v) The copy of Civil Suit filed by the Respondent/Complainant in C.S.No.928/2017 before the Hon'ble High Court of Judicature at Madras.

vi) The copy of Order in CrI.O.P.No.1924 & 1925 of 2018 dated 23.08.2021 Quash the complaint filed by respondent/complainant against the petitioner/accused.”

6. The learned counsel for the petitioner contended that PW1 was cross-examined in detail and the defence was established by the petitioner. However, unfortunately, the relevant documents were not marked and that was put against the petitioner by the trial Court while convicting the petitioner in both the complaints for offence under Section 138 of the Negotiable Instruments Act.

7. The Court below, while considering the applications, has gone into each document and found that the petitioner has not established the relationship of V.P.Foundation and S.J.Associates with either the petitioner or the respondent. That apart, the civil court proceedings, that was sought to be marked as document Nos.5 and 6, did not have any connection with the defence



CrI.O.P.No.261 of 2023

put forth by the petitioner. In view of the same, the Court below refused to entertain the application for additional evidence.

8. This Court has carefully gone through the documents that are attempted to be marked as additional evidence in the criminal appeals. The relationship between the parties has been sufficiently explained qua S.J.Associates and V.P.Foundation in the civil suit pending in C.S.No.928 of 2017 filed by the respondent. On carefully going through the cross-examination of PW1, it is seen that the petitioner has attempted to develop his defence as if the entire amount has been paid/adjusted and that is sought to be established through additional evidence. It is true that there is no explanation in the application filed before the Court below as to why those documents were not marked during the trial.

9. However, that by itself is not a ground to reject the applications filed by the petitioner in both the appeals and the Court has to ultimately ensure that justice is rendered and those documents will be useful for the Court to come to a final conclusion.



CrI.O.P.No.261 of 2023

10. It will be more relevant to take note of the decision of the Hon'ble Apex Court in this regard in ***Rajeswar Prasad Misra vs. State of West Bengal and another*** reported in ***AIR 1965 SC 1887*** and the relevant portion is extracted hereunder:

“10. Additional evidence may be necessary for a variety of reasons which it is hardly necessary (even if it was possible) to list here. We do not propose to do what the Legislature has refrained from doing, namely, to control discretion of the appellate Court to certain stated circumstances. It may, however, be 'said that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it. The power must be exercised sparingly Sup./165--13 and only in suitable cases. Once such action is justified, there is no restriction on the kind of evidence which may be received. It may be formal or substantial. It must, of course, not be received in such a way as to cause prejudice to the accused as for example it should not be received as a disguise for a retrial or to change the nature of the case against him. The order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it unless the requirements of justice dictate otherwise. Commentaries upon the Code are full of cases in which the powers under S. 428 were exercised. We were cited a fair number at the hearing. Some of the decisions suffer from the sin of generalization and some others from that



CrI.O.P.No.261 of 2023

of arguing from analogy. The facts in the cited cases are so different that it would be futile to embark upon their examination. We might have ,attempted this, if we could see some useful purpose but we see none. We would be right in assuming the existence of a discretionary power in the High Court and all that we consider necessary is to see whether the discretion was properly exercised.”

11. In the considered view of this Court, the documents, that are sought to be relied upon by the petitioner as additional evidence, does not lead to filling-up of gaps or a new defence attempted to be projected. These documents are sought to be relied upon only to substantiate the defence that has already been taken by the petitioner by cross-examining PW1. In view of the same, this Court is inclined to interfere with the common order passed by the Court below and accordingly, the order passed by the Court below in CrI.M.P.No.22505 of 2021 in C.A.No.55 of 2021 and in CrI.M.P.22506 of 2021 in C.A.No.56 of 2021, dated 09.11.2022 is hereby quashed. The Court below is directed to permit the petitioner to adduce additional evidence. It goes without saying that the respondent will be given sufficient opportunity to counter the documents that are sought to be relied upon by the petitioner.



CrI.O.P.No.261 of 2023

12. In the result, this criminal original petition is allowed and there shall be a direction to the Court below to dispose of Criminal Appeal Nos.55 and 56 of 2021 within a period of three months from the date of receipt of copy of this order. Consequently, the connected miscellaneous petition is also closed.

11.08.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
nsa

To

The XXI Additional Sessions Judge,
Chennai



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CrI.O.P.No.261 of 2023

N. ANAND VENKATESH, J.

nsa

CrI.O.P No.261 of 2023
and CrI.M.P.No.2402 of 2023

11.08.2023