



Crl.O.P.(MD)No.16468 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.K. RAMAKRISHNAN

Crl.O.P.(MD)No.16468 of 2023

and

Crl.M.P(MD)No.13114 of 2023

R.Ganesh

.. Petitioner/Petitioner/
Appellant

Vs

The State rep., by
The Additional Superintendent of Police,
CBI ACB.

RC No.6(E)/2007-CBI-BS&FC-BLR of 2007

.. Respondent/
Respondent/Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for records of Crl.M.P.No.3 of 2021 in Crl.A.No.134 of 2019 on the file of Principal District Judge at Tiruchirappalli and set aside the order dated 11.08.2022 passed in Crl.M.P.No.3 of 2021 and permit the petitioner to produce certified copy of the findings dated 28.07.2013 rendered by the council of ICAI.



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For Petitioner : Mr.V.Raghavachari
Senior Counsel
for M/s.Ashok Kumar

For Respondent : Mr.M.D.Poornachari
Special Public Prosecutor CBI

ORDER

The Criminal Original Petition has been filed by the petitioner against the order dated 11.08.2022 passed in Crl.M.P.No.3 of 2021 in Crl.A.No.134 of 2019 on the file of the Principal District Judge, Tiruchirappalli and permit the petitioner to produce certified copy of the findings dated 28.07.2013 rendered by council of ICAI.

2. The appellant in Crl.A.No.134 of 2019 on the file of the learned Principal District Judge, Trichy, filed the Interlocutory Application in Cr.M.P.No.3 of 2021 under Section 391 Cr.PC to receive the report of ICAI dated 28.07.2013 and to mark the same as additional evidence in the above appeal in Crl.A.No.134 of 2019.

3. According to the petitioner, he is arrayed an Accused No.3 in C.C.No.1 of 2009 on the file of the learned Chief Judicial Magistrate, Trichy.



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The petitioner, A1 and A2 and other accused are said to have committed offences under Sections 420, 467, 471 read with 120B IPC.

4.1. The petitioner is the Chartered Accountant of M/s.Sangam Organics and Chemicals Pvt. Ltd. Mr.S.Gouthaman is the Managing Director and Mr.S.Mahendran is the Director of the said company. The main objective of the company was to carry out business of processing, refining, manufacturing etc., of all petrochemicals and synthetic fiber, plastics, rubbers etc. The said company was incorporated with the Registrar of Companies, Tamilnadu on 31.03.1995 vide Registration No.18-30753 of 1995. During April 2003, the above said persons approached the Vijaya Bank, Trichy Branch and requested for sanction of credit facilities for the purpose of taking over liabilities of M/s.Sangam Chemicals Trichy Pvt. Ltd., from Union Bank of India, Trichy Branch and also requested additional finance/credit facilities to repay high cost borrowings and also to meet the networking capital requirements. The total amount of Rs.940 lakhs was requested from Vijaya Bank, Trichy Branch to this effect. In support of the said request, the abridged balance sheet was submitted to the bank which is different from the balance submitted to the Registrar of Companies(Ex.P22) on 16.01.2023. The current assets, net current assets and current liabilities were different from the balance

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sheet submitted to the Registrar of Company-Ex.P22 dated 27.08.2023. For

better appreciation the same is extracted as follows:

Balance Sheet	Current Assets Rs.	Current Liabilities Rs.	Net Current Assets Rs.
Balance Sheet submitted to the Registrar of Company-Ex.P22	8.80 crores	5.74 crores	3.06 crores
Abridged Balance Sheet submitted to Vijaya Bank-Ex.P29	7.93 crores	0.25 crores	7.68 crores

4.2. From the above, it is clear that the accused have prepared two sets of balance sheet for the financial year 2001-2002, i.e., one balance sheet was submitted to the Registrar of Companies-Ex.P22 and another one was an inflated abridged balance sheet-Ex.P29 for availing the credit facilities from the bank, otherwise they were not entitled for the facilities sought for. Further, it is clear that the petitioner entered into criminal conspiracy with the said Gowthaman and Mahendran to cheat the Vijaya Bank by dishonestly, fraudulently preparing and submitting the above said abridged balance sheet with inflated balance to the Vijaya Bank and a different balance sheet to the



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Registrar of the Companies to avail the credit facilities from Vijaya Bank and on the basis of the said forged document, they availed the loan of Rs.9.40 crores and thereby caused wrongful loss to the Bank and made wrongful gain to themselves. Therefore, the respondent police registered the case for the offence under Sections 420 r/w 120B, 467 & 471 IPC in RC No.6(E)/2007-CBI-BS&FC-BLR of 2007.

4.3. During the course of the trial, the prosecution produced 27 witnesses and marked 40 exhibits to prove the charge. The learned trial Judge, after considering the evidence convicted the petitioner under Section 120B r/w 420, 467 and 471 IPC and sentenced him to undergo two years rigorous imprisonment and imposed a fine of Rs.5000/- for each offence, in default, to undergo one month simple imprisonment. Hence, he filed the appeal in Crl.A.No.134 of 2019 on the file of the learned Principal Sessions Judge, Trichirappalli.

5. Pending appeal, the petitioner filed the petition under Section 391 Cr.P.C in Cr.M.P.No.3 of 2021 to produce the certified copy of the findings of the ICAI dated 28.07.2013 and mark the document as additional evidence in Crl.A.No.134 of 2019 on the file of the learned Principal Sessions Judge,

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Trichirappalli.

6. The learned Principal Sessions Judge dismissed the said petition vide impugned order dated 11.08.2022. Challenging the same, the petitioner filed this petition under Section 482 Cr.P.C.

7. The learned Senior Counsel Mr.V.Raghavachari appearing for the petitioner submitted that the entire case revolves upon Ex.P29. According to the prosecution, Ex.P29 is the abridged balance sheet fabricated by the petitioner and other accused with inflated balance in order to get a whopping loan amount of Rs.9.40 crores and they obtained the said amount of Rs.9.40 crores and hence, they cheated the Vijaya Bank. The prosecution produced the xerox copy of the said document. Original was not produced. The respondent police sent a communication to the Institute of Chartered Accountants of India (in short 'ICAI') with particulars of the registration of the case against the petitioner. The ICAI conducted the enquiry under Section 21 of the Chartered Accountants Act, 1949 and held that the petitioner is not guilty of professional misconduct with the following order:

“12. Accordingly, on consideration of the Report of the Disciplinary Committee along with the written representation dated 22nd July 2013 received



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from the respondent and also the oral submissions made by the authorised representative of the respondent before it, the Council decided to accept the said report and decided that the respondent was Not Guilty of Professional Misconduct falling within the meaning of Clause (7) of Part I of the Second Schedule read with Section 21 of the Chartered Accountants Act, 1949. The Council also noted that since Clauses (5) and (6) initially alleged against the respondent are not applicable, accordingly the decision is restricted to Clause (7) of Part I of the Second Schedule to the said Act.”

8. For rendering the same, the Council has also considered the report dated 01.07.2013 of the Committee constituted to conduct enquiry on the allegation made against him with the following findings:

“45.The Committee observed that the opinion of the Handwriting Expert was to the effect that the signature of the respondent tallies with the signature of the documents submitted to the ROC and not in respect of those submitted to the Bank, the signature of the respondent was super-imposed and therefore, it was possibly a forged document. It was also seen that there are other issues involved between the Company and the Bank and CBI Charge-sheet has also been filed in this regard against the officials of the Company. The Bank officials involved had also been suspended and are facing proceedings in the Court. It was, therefore, apparent that there was no evidence to show that the respondent was involved in any conspiracy to defraud the Bank and/or that he was involved in the submissions of any alleged false documents to the Bank. The Committee was also constrained to record that the original balance sheets of the sub-entity could not be produced by the Bank despite directions to them.



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*46. Therefore, taking an overall view of the facts and circumstances and considering all the evidences as made available to it, this Committee is inclined to hold the respondent **Not Guilty** of any Professional Misconduct falling within the meaning of Clause (7) of Part-I of the Second Schedule to the Chartered Accountants Act, 1949 read with Section 21 of the said Act.”*

9. Therefore, the learned Senior Counsel made a submission that the said document is crucial document to prove the innocence of the petitioner. The learned Senior Counsel further elaborated the argument that when the adjudicating authority constituted under the Chartered Accountants Act, 1949 rendered the finding after examining the bank officials and obtaining the handwriting expert's opinion, the same may be relevant evidence to decide the guilt of the petitioner. To fortify the same, he relied upon the judgment of the Hon'ble Supreme Court reported in **2011(3)SCC581[Radheshyam Kejriwal v. State of West Bengal]** and **2020(9)SCC 636 [Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EPW, CBI]**. The learned Senior Counsel further elaborated that the document Ex.P29 is a xerox copy. During trial, the petitioner strongly objected to mark the document and the learned trial Judge did not consider the objection at the time of the conclusion of the trial and hence, to substantiate his plea that the same was not proved in accordance with law and to prove his case, the present document is essential

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one and hence it was argued that the learned trial Judge dismissed the petition without adhering to the principle that the petitioner has a right of fair trial which includes to produce the relevant document to prove his innocence.

10. The learned Senior Counsel further submitted that the reasoning assigned by the learned Judge that the document in question dated 28.07.2013 was sought to be produced before the appellate Court without any explanation for the delay and satisfactory reason for not submitting the said document before the trial Court and the said reason was not correct. As per Section 391 Cr.P.C, the document is essential to render the fair justice and the same has to be received irrespective of the fact that the same was produced at the appellate stage. To substantiate the said submission, he relied the judgment of the Hon'ble Supreme Court reported in 1987 (2) SCC 364. The learned Senior Counsel further submitted that the other reason assigned by the learned Appellate Judge that the document was not necessary to decide the case, as already Ex.P1 to Ex.P40 are available and hence, the said document was not anyway helpful to the petitioner without any supporting evidence. The said reason of the learned Appellate Judge is not in consonance with the appreciation of the true spirit of the Section 391 Cr.P.C. The learned Senior Counsel submitted that the petitioner wants only to mark the document



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without any further prayer to set aside the appeal. In all aspect, the learned Appellate Judge's reasoning is not legally sustainable and hence, he prays to set aside the impugned order and to allow this petition and permit the petitioner to mark the said document.

11. The learned Special Public Prosecutor Mr.M.D.Poornachari without filing fresh counter argued on the basis of counter affidavit filed before the Court below submitted that the petitioner is the centre force of the entire episode of obtaining the loan of Rs.9.40 crores on the basis of the abridged balance sheet with inflated balance. The present document was already available in the custody of the petitioner and no question was addressed by the petitioner during the cross-examination of the witnesses. The said document is only the finding of the adjudicating authority constituted under the Chartered Accountants Act, 1949. The adjudicating authority has followed only the summary procedure. Therefore, the said finding is not relevant to decide the issue of offence under Section 461, 471 and 420 r/w 120B IPC. In the report, there was no reference relating to the examination of all the witnesses and the documents collected by investigating agency ie., 27 witnesses and 40 documents. During trial to prove the charge against the petitioner, the CBI produced more than 40 documents and examined 27

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witnesses to prove the case. The charge of misconduct under the Chartered Accountants Act, 1949, is not similar with the allegation made in the prosecution case of cheating and other allied offence. Therefore, the said document is not relevant and also not admissible to decide the guilt of the petitioner. The judgment relied by the petitioner is not applicable to the present case.

11.1. Here, the ICAI conducted only summary proceedings and not a detailed enquiry on the material collected by the CBI with similar charges. Therefore, the said finding cannot be held admissible to decide the issues in the appeal. The trial Court has considered the said submission of the petitioner and found him guilty relying on the evidence of number of witnesses including P.W19. Therefore, the finding of the learned trial Judge on the basis of the material is subject matter of the appeal. To test the finding of the learned trial Judge, the present document is not only irrelevant but also not admissible before the Criminal Court. The Hon'ble Supreme Court in the judgement reported in 2012(9)SCC685 answered the question negatively to the reference that whether the prosecution was terminated on the ground of exoneration in the department proceedings. Hence, the said principle is applicable to the present case.



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11.2. The interpretation to Section 391 Cr.P.C is not as elastic as argued by the learned Senior Counsel for the petitioner. Before invoking the power under Section 391, he should satisfy the requirement of Section 391 Cr.P.C as held by the Hon'ble Supreme Court in the cases reported in 2023 SCC Online 423 and 2019(11)SCC575. The learned Special Public Prosecutor also placed reliance on the counter filed before the Court below and submitted that the learned appellate Judge correctly decided the issue. Eventhough the trial was conducted from the year 2014 and was concluded in the year 2019 and the appeal was filed in the year 2019, the petitioner filed this document without any bonafide reason before the appellate Court in the year 2021 and hence, he seeks for dismissal of this petition.

12. This Court has considered the rival submission made on either side and the precedents relied upon by them.

13. Finding:

The petitioner is a registered Chartered Accountant and he has been convicted for the offence under Section 420 r/w 120B, 467 & 471 IPC. The main charge against the petitioner is that the petitioner, A2 and A3 conspired

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together and obtained the loan of Rs.9.40 crores in the name of A4 Company by submitting false document and false particulars and caused huge loss to the Bank to the tune of Rs.10.55 crores. To prove the same, the prosecution placed number of documents and oral evidence. The petitioner also marked number of documents in an effort to disprove the prosecution case. The learned trial Judge considered the various documents including the Ex.P29, abridged balance sheet, oral evidence and the incriminating circumstances, and found that the petitioner committed offences under Section 420 r/w 120B, 467 & 471 IPC.

14. Now the petitioner filed the conclusion of the proceedings initiated against the petitioner under Section 21 of the Chartered Accountants Act, 1949. The disciplinary authority constituted under the Chartered Accountants Act, 1949 has conducted the summary proceedings and exonerated the petitioner from the charge of misconduct. On going through the report and the proceedings and the materials annexed with the report, it is clear that they conducted summary proceedings. In the said proceedings, the Committee did not consider all the material collected by the CBI. They only considered the Ex.P29. It is not clear from the record as to the basis on which the Committee called the handwriting expert's opinion. Further, the handwriting expert's

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opinion is not a final conclusion to prove the involvement of the petitioner in the criminal case, more particularly, the charge of criminal conspiracy.

Therefore, the finding of the Committee is not relevant to decide the merit or demerit of the conviction. In this aspect, it is relevant to note the judgment of the Hon'ble Three Judges Bench of the Hon'ble Supreme Court in **2006 (4) SCC 278 [Standard Chartered Bank and Others v. Directorate of Enforcement and Others]** as follows:

“25. The prayer for the issue of a writ of prohibition restraining the authorities under the Act from proceeding with the adjudication and the prosecution is essentially based on the constitutional challenge to the relevant provisions of the Act on the ground that they violate Articles 14 and 21 of the Constitution. Once we have held, as the High Court did, that the provisions are constitutional, the basis on which the writ of prohibition is sought for by the appellants disappears. It is settled by the decisions of this Court that a writ of prohibition will issue to prevent a tribunal or authority from proceeding further when the authority proceeds to act without or in excess of jurisdiction; proceeds to act in violation of the rules of natural justice; or proceeds to act under a law which is itself ultra vires or unconstitutional. Since the basis of the claim for the relief is found not to exist, the High Court rightly refused the prayer for the issue of a writ of prohibition restraining the authorities from continuing the proceedings pursuant to the notices issued.”

15. The disciplinary authority constituted under the Chartered Accountants Act is only for the limited purpose whether the petitioner's conduct amounts to misconduct on the basis of Ex.P29. It is neither a Court nor a Judicial Tribunal. It never conducted any prosecution of an offence. Initiation of summary proceedings under the Chartered Accountants Act to

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look into the conduct of petitioner is not in the nature of criminal proceedings. It is only to regulate the conduct of the professional. Issue of misconduct under the said Act is different from the allegation of cheating, forgery etc., made in the criminal proceedings.

15.1. It is relevant to look into the judgment of the Hon'ble Constitution Bench of the Hon'ble Supreme Court in ***Maqbool Hussain vs. The State of Bombay***[AIR1953SC325]:

13.The tests of a judicial tribunal were laid down by this Court in Bharat Bank Ltd., Delhi v. Employees of the Bharat Bank Ltd., Delhi MANU/SC/0030/1950 : 1950 S.C.R. 459 in the following passage quoted with approval by Mahajan and Mukherjea JJ. from Cooper v. Wilson (1937) 2 K.B. 309 at page 340 :-

"A true judicial decision presupposes an existing dispute between two or more parties and then involves four requisites :- (1) The presentation (not necessarily orally) of their case by the parties to the dispute; (2) If the dispute between them is a question of fact, the ascertainment of the fact by means of evidence adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence; (3) If the dispute between them is a question of law, the submission of legal argument by the parties; and (4) A decision which disposes of the whole matter by a finding upon the facts in dispute and application of the law of the land to the facts so found, including where required, a ruling upon any disputed question of law.

17. We are of the opinion that the Sea Customs Authorities are not a judicial tribunal and the adjudging of confiscation, increased rate of duty or penalty under the provisions of the Sea Customs Act do not constitute a judgment or order of a court or judicial tribunal necessary for the purpose of supporting a plea of double jeopardy.



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15.2. The same was affirmed by the Hon'ble Constitution Bench of the Hon'ble Supreme Court in **AIR 1970 SC 962 [Assistant Collector of Customs v. L.R. Melwani, (1969) 2 SCR 438]** held as follows:

“8. In order to get the benefit of Section 403, Criminal Procedure Code or Article 20(2), it is necessary for an accused person to establish that he had been tried by a “Court of competent jurisdiction” for an offence and he is convicted or acquitted of that offence and the said conviction or acquittal is in force. If that much is established, it can be contended that he is not liable to be tried again for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236 or for which he might have been convicted under-Section 273. It has been repeatedly held by this Court that adjudication before a Collector of Customs is not a “prosecution” nor the Collector of Customs a “Court”.

15.3. As far as the charge before the trial Court is concerned, it is that the petitioner conspired together with other accused to get the higher amount of loan by producing false documents. The trial court has held that the said fact has been proved by the prosecution with the available evidence including the defence evidence. The same is under challenge before the appellate court and the appellate court shall consider the same. This material has no relevance to decide the issue. Even during the trial, the petitioner has not even suggested that the document was forged by somebody else. In the said event, the petitioner pleaded before the disciplinary authorities that his signature was



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forged. The petitioner never made the said plea before the trial Court. In the said circumstances, failure to produce the same before the trial Court has not been explained at all and it is clear that the document is presently sought to be produced only with the intent to fill the *lacuna* in their case, which is not permissible as per the law laid down by the Hon'ble Supreme Court in the following judgments:

15.4. Ukha Kolhe v. State of Maharashtra, AIR 1963 SC 1531:

“An opportunity to lead this evidence may be given under Section 428, not with a view to fill up lacunae in the evidence but to regularise the trial of the accused and to ensure that the case is established against him beyond reasonable doubt, more so when for the purpose of convicting the accused reliance is sought to be placed upon a presumption arising from the report of a Chemical Examiner, who is not examined before the Court, and which substantially raises a presumption of guilt. In this connection, the circumstance that the regularity of the process for extraction of blood and the subsequent dealing of the blood phial was not challenged by the appellant in the trial court is material. ”

15.5. Rambhau v. State of Maharashtra, (2001) 4 SCC 759:



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“4. It is not to fill up the lacuna but to subserve the ends of justice.”

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15.6. Nishar Ahmed Fajmohmed Kaji v. State of Gujarat, (1998) 9 SCC 23.

“7. The application for examining him was made after a lapse of seven years from the date of occurrence, some time before the hearing of the appeal though the appeal was itself pending from 1985. The High Court has rightly rejected the application filed by the appellants.”

15.7. State (NCT of Delhi) v. Pankaj Chaudhary, (2019) 11 SCC 575

“25. Any material produced before the appellate court to fill-up the gaps by either side cannot be considered by the appellate court; more so, to reverse the judgment of the trial court.”

15.8. Rajvinder Singh v. State of Haryana, (2016) 14 SCC 671:

“12. It was certainly possible to examine forensic expert at the trial court stage itself and the High Court was right and justified in rejecting the prayer to lead additional evidence at the appellate stage.”

15.9. State of Rajasthan Vs. Asharam Alias Ashumal reported in



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2023 SCC OnLine 423:

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*“14. This Court in **Rajeswar Prasad Misra v. State of West Bengal** has opined that as additional evidence may be necessary for various reasons, the legislature has refrained from curtailing such discretion of the appellate court. The touchstone of when the additional evidence at the appellate stage may be taken on record is not the impossibility or inability to pronounce the judgment in its absence, but whether there would be a failure of justice without such additional evidence. This discretion is not to be exercised lightly but requires caution and care as it is to be exercised only in cases when the appellate court finds, on good and justifiable grounds, that there would be a failure of justice without the additional evidence being taken on record. However, once this condition is satisfied, there is no restriction on the kind of evidence received, which may be formal or substantial.*

16. Both Sections 311 and 391 of the Cr. P.C. relate to power of the court to take additional evidence; the former at the stage of trial and before the judgment is pronounced; and the latter at the appellate stage after judgment by the trial court has been pronounced. It may not be totally correct to state that the same considerations would apply to both situations as there is a difference in the stages. Section 311 of the Cr. P.C. consists of two parts; the first gives power to the



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court to summon any witness at any stage of inquiry, trial or other proceedings, whether the person is listed as a witness, or is in attendance though not summoned as a witness. Secondly, the trial court has the power to recall and re-examine any person already examined if his evidence appears to be essential to the just decision of the case. On the other hand, the discretion under Section 391 of the Cr. P.C. should be read as somewhat more restricted in comparison to Section 311 of the Cr. P.C., as the appellate court is dealing with an appeal, after the trial court has come to the conclusion with regard to the guilt or otherwise of the person being prosecuted. The appellate court can examine the evidence in depth and in detail, yet it does not possess all the powers of the trial court as it deals with cases wherein the decision has already been pronounced.

17.State (NCT of Delhi) v. Shiv Kumar Yadav emphasises that in exercise of the discretion under Section 311 of the Cr. P.C., the court, while considering an application for recall of witness, should not get swayed by the argument that only the accused who is in custody will suffer by the prolongation of proceedings, as this may not be valid and serving the ends of justice. It is not only the matter of delay but also the hardship to the victim/witnesses when they are recalled for examination. Recall is certainly permitted if essential for the just decision and for which there should be a tangible reason that fair trial would suffer without it. The discretion is to be



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exercised judiciously to prevent failure of justice, and must not be exercised arbitrarily In our opinion, the appellate court must be equally, if not more cautious, of the desire to delay the hearing of the appeal, or the attempt to lead additional evidence to explore a chance of contradictory evidence. While the prayer for leading additional evidence should be permitted to correct a bona fide error or otherwise, and a party may be entitled to further opportunity without any fault on the part of the opposite party, the request for recall should be bona fide and is to be balanced carefully with relevant considerations, including hardship to the witness and delay of the proceedings. Right to speedy trial, including speedy disposal of an appeal, is not the exclusive right of an accused, but an obligation of the court towards the society in general, and the victim in particular. Balance between the rights of an accused and the interests and rights of an individual victim and the society, without compromising the right of the accused to a fair trial, has been highlighted by this Court in *Girish Kumar Suneja v. Central Bureau of Investigation*, *P.Ponnusamy v. State of Tamil Nadu* and *State of West Bengal v. Amiya Kumar Biswas*. Every criminal case, it is stated, is a voyage of discovery in which the truth is the quest. The process of ascertaining the truth requires compliance of procedures and rules of evidence. In a well-designed system, judicial findings of formal legal truth should coincide with substantive truth.



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This happens when the facts contested are skillfully explored in accordance with the procedure prescribed by law. Further, in a criminal trial, burden of proof to establish the fact, which has to be proven beyond reasonable doubt, is on the prosecution. The power to take additional evidence in an appeal is to be exercised to prevent injustice and failure of justice, and thus, must be exercised for good and valid reasons necessitating the acceptance of the prayer.

18. When we apply the aforesaid dicta to the factual matrix and background of the present case as held in paragraph 11 above, we do not think that the test to allow additional evidence is satisfied. On the other hand, the criminal appeal, which is ripe for hearing before the High Court, has not been taken up and has been delayed by moving the application under Section 391 of the Cr. P.C. for recording of additional evidence, which was filed nearly eight years after the date of occurrence”.

16. The Hon'ble Supreme Court in recent judgments specifically held that petition filed under Section 391 Cr.P.C cannot be allowed unless the extraordinary circumstances satisfying the ingredients of the section, are established. The petitioner has not met the requirement as enunciated by the above judgements of the Hon'ble Supreme Court. There are sufficient materials on the side of the prosecution to prove its case and abundant

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materials have also been produced by the accused to prove their defence.

Even according to the petitioner, Ex.P29 is the xerox copy and the same was erroneously marked and relied by the prosecution and the said document is inadmissible. They have raised objection. Under the factual circumstances, it is for the Appellate Court to test the same along with other material to dispose of the appeal. Hence, the learned Appellate Judge correctly dismissed the petition stating that Ex.P1 to Ex.P40 are also available to adjudge the case on appeal.

17. It is clear that the judgment relied by the petitioner is not applicable to the facts. In the said cases, the competent authority under the FERA adjudicated the issues with similar allegation on the basis of the same allegation. The criminal proceeding is registered and pending. The FERA adjudicating authority decided the issues on the basis of all the materials available in the criminal Court and exonerated the accused for the said FERA violation. Therefore, the Hon'ble Supreme Court quashed the same. Here, the ICAI proceedings is only summary proceedings as per the Rule 14(1) of the Chartered Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of cases) Rules, 2007, which reads as follows:

“14. Procedure to be followed by the Board of



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Discipline:

(1) The Board of Discipline shall follow “summary disposal procedure” in dealing with all cases before it, as laid down in this Chapter.

(2).....”

18. In the said summary proceedings, not even the material evidence relied by the learned trial Judge to convict the petitioner were produced. It is not treated as a Court. They have not conducted any trial by examining any witnesses who were examined by the CBI to prove the charges before the learned trial Judge. In the said circumstances, the finding rendered by the FERA authority is not on par with the disciplinary authority constituted under the ICAI Act. The similar question was raised by one of the Chartered Accountant before the Calcutta High Court in C.R.R.No1254 of 2017 and C.R.R.No.2582 of 2016 wherein the accused wanted to discharge the criminal case on the basis of the finding rendered by the ICAI. The High Court held as follows:

The short issue which, therefore, falls for consideration is whether the exoneration of the petitioner by the Disciplinary Committee vide order dated 8th February, 2016 would render the allegations against him in the impugned prosecution groundless so as to justify his discharge at this stage. In order to adjudicate such contention, I have gone through the allegations in the impugned charge sheet. I find that the role of the petitioner is not restricted to mere certification as to the nature of business of the accused borrowers as claimed by the Committee in its reports dated 8th February,



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2016. He had been employed by the accused borrowers to prepare projected financial statements of the firms and there is ample materials on record to show that such projected financial statements were based on forged and fabricated documents and had been generated to create a false impression with regard to the financial viability of the said firms. Such financial statements were kept on record by the principal accused, that is the branch manager, Atanu Kr. Mitra, as a facile cover-up to justify his unauthorized extension and/or enhancement of cash credit facilities and other financial benefits to the borrowers in utter disregard to prudent banking procedure and his permissible lending limits thereby causing wrongful loss to the bank. It has also come to light that the petitioner was acting as an agent of the accused borrowers and not as a bona fide professional. His role was not restricted to mere certification or preparation of projected financial statements but he had even written the loan applications on behalf of the accused borrowers on the strength of which the financial facilities were fraudulently extended.

It is true that the Disciplinary Committee had exonerated the petitioner from the allegation of professional misconduct under the provisions of Chartered Accountants Act. The reasoning adopted by the Disciplinary Committee was essentially founded on the premise that the petitioner had not been appointed as a professional tax auditor and, therefore, his failure to report the enhanced volume of business or furnishing of requisite forms under the law could not be treated as breach of professional responsibilities. However, it is accepted in the said order that the petitioner was specifically employed for preparation of projected financial reports for enhancement of the loan facilities to the accused borrowers and had even written the loan applications for the accused borrowers to avail of the illegitimate financial benefits in this case.

Such finding, in my opinion, reinforces the prosecution case of a special relationship between the accused borrowers and the petitioner and exposes the latter's incriminating role in the transaction to obtain aforesaid fraudulent loans in the instant case. Moreover, it must be borne in mind that the scope of enquiry before the Committee was a limited one and did not extend to



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the petitioner's role as a conspirator to defraud the bank.
It is trite law that exoneration in a departmental
proceeding would not ipso facto result in an exoneration
from a criminal case. Enunciating this proposition, the
Apex Court in **(NCT of Delhi vs. Ajay Kumar Tyagi,**
(2012) 9 SCC 685) held as follows:-

"24. . . .exoneration in departmental proceeding ipso facto would not lead to exoneration or acquittal in a criminal case. On principle also, this view commends us. It is well settled that the standard of proof in department proceeding is lower than that of criminal prosecution. It is equally well settled that the departmental proceeding or for that matter criminal cases have to be decided only on the basis of evidence adduced therein. Truthfulness of the evidence in the criminal case can be judged only after the evidence is adduced therein and the criminal case can not be rejected on the basis of the evidence in the departmental proceeding or the report of the Inquiry Officer based on those evidence.

25. We are, therefore, of the opinion that the exoneration in the departmental proceeding ipso facto would not result into the quashing of the criminal prosecution. We hasten to add, however, that if the prosecution against an accused is solely based on a finding in a proceeding and that finding is set aside by the superior authority in the hierarchy, the very foundation goes and the prosecution may be quashed. But that principle will not apply in the case of the departmental proceeding as the criminal trial and the departmental proceeding are held by two different entities. Further, they are not in the same hierarchy."

It is nobody's case that the instant prosecution was initiated on the finding of the disciplinary authority which has been set aside by a superior authority. On the other hand, the instant prosecution and the proceeding under the Chartered Accountants Act have completely different scope and arena of enquiry and adjudication. While the former involves a prosecution into allegations



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of conspiracy with a public servant to misappropriate public funds of a bank, the latter is restricted to professional misconduct alone. The findings of the Disciplinary Committee by no stretch of imagination can be said to be binding on the criminal court where the accusation is to be proved on the basis of evidence adduced before it in accordance with law. Moreover, the findings do not render the substratum of accusation of conspiracy between the petitioner and the other accused persons in extending unjustified financial assistance to the borrowers in the instant case patently absurd or inherently improbable. The Committee was not at all concerned with the allegations of criminal conspiracy and/or criminal misconduct which are the material issues in the impugned prosecution. Hence, I am of the opinion that no reliance could be placed on the findings of the Committee to negate the substantial materials on record which give rise to a strong suspicion as to the involvement of the petitioner in the alleged offences.

Accordingly, I am of the opinion that the prayer for discharge of the petitioner from the instant case was rightly turned down. The petitioner, however, shall be at liberty to raise all just defences in the course of trial of the instant case in accordance with law.

It is made clear that the findings recorded by me shall not have any bearing at the subsequent stage of the trial which needless to mention, shall be decided on the basis of the evidence adduced by the parties without being swayed by the observations in the instant order.”

19. The said judgment was confirmed by the Hon'ble Supreme Court in Special Leave Petition (Criminal) Diary No.18022/2018 after issuing notice to the parties. Therefore, the said document is not relevant to decide the culpability of the petitioner over riding the material adduced by the CBI before the trial Court which according to the prosecution were relied by the trial Judge to convict the petitioner. No plea was raised either before the trial



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Court or in the grounds of appeal filed in Crl.A.No.134 of 2009 on the file of the Appellate Court about the documents. Admissibility and relevance is also to be seen. The petitioner has filed the petition to prolong the hearing of the appeal by filing the document after number of years with an intention to fill up the *lacuna* in his case. He has already filed number of documents as defence. Therefore, there was no explanation on his side for non-production of the said document before the trial Court eventhough, he put a question during the cross-examination of one witnesses. As per the above stated law laid down by the Hon'ble Supreme Court in 2016(14)SCC671, 1998(9)SCC23, AIR 1963SC1531, 2001(4)SCC759, 2019(11)SCC575 and 2023 SCC Online 423, it is clear that provision of Section 391 Cr.P.C cannot be invoked when the party concerned had fair opportunity to produce the same and he has not availed of it. Hence, in the special circumstances of this case, the judgment reported in 1987(2)SCC364 relied by the learned Senior counsel is not applicable. In result, in all aspects, the petitioner never established failure of justice. On the other hand, he filed this petition by abusing the process of law.

20. In the case of the service jurisprudence, when the disciplinary authority, after conducting the parallel enquiry on the basis of the material

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collected in the criminal cases and examining all the witnesses, gives a finding that there was no material to proceed the charge against the delinquent, then in the said type of cases, the Hon'ble Supreme Court in **1996 (9) SCC 1 [P.S.Rajya v. State of Bihar]** held that once the finding by the disciplinary authority on the basis of the same set of material placed by the prosecution came to conclusion that the material collected by the prosecution is not sufficient to initiate the department proceedings, it would bind the criminal court. The said principle was referred to the Larger Bench of the Hon'ble Supreme Court. The Hon'ble Larger Bench after considering the entire case laws in **2012 (9) SCC 685 [State (NCT of Delhi v. Ajay Kumar Tyagi)]** held as follows:

“7. The High Court referred to the allegation made in the criminal case and the departmental proceeding and observed [Ajay Kumar Tyagi v. State, (2008) 3 DLT (Cri) 788] that “there is not even an iota of doubt that the charges framed in both the proceedings are the same”. Accordingly, it quashed the criminal proceedings and while doing so, observed [Ajay Kumar Tyagi v. State, (2008) 3 DLT (Cri) 788] as follows:

“Considering the foregoing discussion, I am of the view that if the departmental proceedings end in a finding in favour of the accused in respect of allegations which form basis for criminal proceedings then departmental adjudication will remove the very basis of criminal proceedings and in such situation continuance of criminal proceedings will be a futile exercise and an abuse of the process of Court. I find that the charge in the present case is based on the same allegations which were under consideration before the enquiry officer of the Jal Board. If the charge could not be proved in the departmental proceedings where the standard of proof was much lower it is very unlikely that the same charge could be proved in a criminal trial where the standard of proof is quite stringent comparatively. Thus, the prosecution of the petitioner in criminal proceedings would only result in his harassment.”

Aggrieved by the same, the State has preferred this special leave petition.

9. When the matter came up for consideration before a Bench of this Court



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on 13-9-2010, finding conflict between two-Judge Bench decisions of this Court, it referred the matter for consideration by a larger Bench and, while doing so, observed [State (NCT of Delhi) v. Ajay Kumar Tyagi, Criminal Appeal No. 1334 of 2012, decided on 13-9-2010 (SC)] as follows:

“The facts of the case are that the respondent has been accused of taking bribe and was caught in a trap case. We are not going into the merits of the dispute. However, it seems that there are two conflicting judgments of two-Judge Benches of this Court: (i) P.S. Rajya v. State of Bihar [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] , in which a two-Judge Bench held that if a person is exonerated in a departmental proceeding, no criminal proceedings can be launched or may continue against him on the same subject-matter, (ii) Kishan Singh v. Gurpal Singh [(2010) 8 SCC 775 : (2010) 3 SCC (Cri) 1091 : (2010) 3 SCC (Civ) 583] , where another two-Judge Bench has taken a contrary view. We are inclined to agree with the latter view since a crime is an offence against the State. A criminal case is tried by a Judge who is trained in law, while departmental proceeding is usually held by an officer of the department who may be untrained in law. However, we are not expressing any final opinion in the matter.

In view of these conflicting judgments, we are of the opinion that the matter has to be considered by a larger Bench.”

This is how the matter is before us.

19. *Even at the cost of repetition, we hasten to add that none of the heads in P.S. Rajya [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] is in relation to the effect of exoneration in the departmental proceedings on criminal prosecution on identical charge. The decision in P.S. Rajya [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] , therefore, does not lay down any proposition that on exoneration of an employee in the departmental proceeding, the criminal prosecution on the identical charge or the evidence has to be quashed.*

20. *It is well settled that the decision is an authority for what it actually decides and not what flows from it. The mere fact that in P.S. Rajya [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] , this Court quashed the prosecution when the accused was exonerated in the departmental proceeding would not mean that it was quashed on that ground. This would be evident from para 23 of the judgment, which reads as follows: (SCC p. 9)*

“23. Even though all these facts including the report of the Central Vigilance Commission were brought to the notice of the High Court, unfortunately, the High Court took a view that the issues raised had to be gone into in the final proceedings and the report of the Central Vigilance Commission, exonerating the appellant of the same charge in departmental proceedings would not conclude the criminal case against the appellant. We have already held that for the reasons given, on the peculiar facts of this case, the criminal proceedings initiated against the appellant cannot be pursued. Therefore, we do not agree with the view taken by the High Court as stated above. These are the reasons for our order dated 27-3-1996 [P.S. Rajya v. State of Bihar, Criminal Appeal No. 434 of 1996, order dated 27-3-1996 (SC)] for allowing the appeal and quashing the impugned criminal proceedings and giving consequential reliefs.”

(emphasis supplied)

From the reading of the aforesaid passage of the judgment it is evident that the prosecution was not terminated on the ground of exoneration in the



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departmental proceeding but, on its peculiar facts.

24. Therefore, in our opinion, the High Court quashed the prosecution on total misreading of the judgment in P.S. Rajya case [(1996) 9 SCC 1 : 1996 SCC (Cri) 897] . In fact, there are precedents, to which we have referred to above, that speak eloquently a contrary view i.e. exoneration in departmental proceeding ipso facto would not lead to exoneration or acquittal in a criminal case. On principle also, this view commends us. It is well settled that the standard of proof in a department proceeding is lower than that of criminal prosecution. It is equally well settled that the departmental proceeding or for that matter criminal cases have to be decided only on the basis of evidence adduced therein. Truthfulness of the evidence in the criminal case can be judged only after the evidence is adduced therein and the criminal case can not be rejected on the basis of the evidence in the departmental proceeding or the report of the inquiry officer based on those evidence.

25. We are, therefore, of the opinion that the exoneration in the departmental proceeding ipso facto would not result in the quashing of the criminal prosecution. We hasten to add, however, that if the prosecution against an accused is solely based on a finding in a proceeding and that finding is set aside by the superior authority in the hierarchy, the very foundation goes and the prosecution may be quashed. But that principle will not apply in the case of the departmental proceeding as the criminal trial and the departmental proceeding are held by two different entities. Further, they are not in the same hierarchy.”

21. The said judgment was not placed before the latest Three Judges Bench reported in **2020 (9) SCC 636**. The **2020 (9) SCC 636** judgment was arising out of FERA violation. The jurisdiction of the authority constituted under FERA is different from the authority constituted under the Chartered Accountants Act, 1949. The authority constituted under the Chartered Accountants Act, 1949, conducted only summary proceedings. In the said circumstances, the Appellate Judge correctly has come to the conclusion that the document intended to be marked is not relevant to decide the merits of the case.



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22. Hon'ble Supreme Court in Asim @ Munmun @ Asif Abdulkarim Solanki Vs. The State of Gujarat reported in **2020 SCC OnLine SC 1098**, directed to dispose the application immediately, it held as follows:

“3. Section 391 Cr.P.C., does not impose any restriction as to when the application filed for adducing additional evidence should be heard by the High Court. In fact, we are of the opinion that it is desirable that an application filed under Section 391 should be heard immediately after it is filed without waiting for the appeal to be finally heard.”

22.1. The Hon'ble Supreme Court in Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In re, (2021) 10 SCC 598 judgment specifically stated that the admission of documents is to be decided at the time of the marking of the document by clarifying the ***Bipin Shantilal Panchal v. State of Gujarat, 2001 (3) SCC 1*** in the following words:-

“15. The Presiding Officer therefore, should decide objections to questions, during the course of the proceeding, or failing it at the end of the deposition of the witness concerned. This will result in de-cluttering the record, and, what is more, also have a salutary effect of preventing



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frivolous objections. In given cases, if the court is of the opinion that repeated objections have been taken, the remedy of costs, depending on the nature of obstruction, and the proclivity of the line of questioning, may be resorted to. Accordingly, the practice mandated in Bipin Shantilal Panchal [Bipin Shantilal Panchal v. State of Gujarat, (2001) 3 SCC 1 : 2001 SCC (Cri) 417] shall stand modified in the above terms.”

22.2. So, this Court has made detailed discussion about the issues and finds that the said report based on the summary proceedings without considering the entire materials collected by the CBI is not relevant to decide the complicity or otherwise of the petitioner in the above crime overriding the procesution documents and evidence.

23. Admittedly, there is no averment in the petition as to what prevented the petitioner to file the above said document during the pendency of the trial. Even though the order was rendered by the Competent Authority in the year 2014, the trial was completed only in the year 2016 and the examination of witnesses was conducted in the year 2015. So, the petitioner had ample opportunity, but failed to do.

24. As observed by the learned trial Judge, this document is not

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relevant to decide the issues and the allegation made against the petitioner is that the petitioner and the other accused conspired together and cheated the Bank to the tune of 9.40 crores. Further, as per the judgment of the Hon'le Supreme Court reported in **2022 SCC Online SC 292[Sanjay kumar Singh v. State of Jharkhand]**, wherein it has been held that *“The true test, Whether the appellate Court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced”*. Hence, the learned trial Judge correctly decided the issues on the basis of the above judgment and rejected the document.

25. Further, the judgement of the Hon'ble Supreme Court in 2020(9)SCC636 is not applicable to the facts of the present case. The judgment in **2012 (9) SCC 685 [State (NCT of Delhi v. Ajay Kumar Tyagi]** has also not been placed and considered in **2020(9)SCC636**. In the said circumstances, the said document is not relevant to decide the issue and this Court does not find any merit in the order passed by the learned Principal Sessions Judge, Tiruchirappalli.



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26. In the result, this Criminal Original Petition is dismissed.

Consequently, connected miscellaneous petition is closed.

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NCC :Yes/No

Internet :Yes/No

Index :Yes/No

PJL

Note: Issue order copy on 26.09.2023.

To

1. The Principal District Judge, Tiruchirappalli.

2. The Additional Superintendent of Police, CBI ACB.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

PJL

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and
Crl.M.P(MD)No.13114 of 2023

12.09.2023