

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

CRIMINAL REVISION CASE Nos.1781 & 1881 of 2018

COMMON ORDER:

Since the facts of the case, issue involved and the parties to both these Criminal Revision Cases are identical, both these Criminal Revision Cases are taken up together and are being disposed of by way of this common order.

2. Criminal Revision Case Nos.1781 and 1881 of 2018 are filed by the petitioner under Sections 397 and 401 of Cr.P.C., challenging the orders of the even date, dated 07.05.2018, passed in CrI.M.P.No.561 and 562 of 2018 respectively in M.C.No.59 of 2013, by the learned Additional Metropolitan Sessions Judge for the Trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge-cum-IX Additional Metropolitan Sessions Judge, Hyderabad, whereby, the petition filed by the petitioner under Section 311 of Cr.P.C. seeking to recall him to mark certain documents in his evidence (subject matter of CrI.R.C.No.1781 of 2018) and the petition filed by the petitioner under Order VII Rule 14(3) of

CPC to receive the list of documents (subject matter of Crl.R.C.No.1881 of 2018), were dismissed.

3. I have heard the submissions of Sri D.Ramakrishna, learned counsel for the petitioner in both these Criminal Revision Cases, Sri D.Sudarsan Reddy, learned counsel for the respondent No.1 in both these Criminal Revision Cases and perused the record.

4. Learned counsel for the petitioner in both these Criminal Revision Cases would submit that the Court below erred in dismissing both the subject applications. The Court below ought to have permitted to recall the petitioner in the interest of justice and mark the documents sought to be marked, which are essential for arriving at a just decision in the subject Maintenance Case. The documents sought to be filed, i.e., bank statements, agreement of sale-cum-GPA, lease deeds and encumbrance certificates etc., were mixed up with other files in the office of the petitioner and as such, he could not produce the same before the Court while giving evidence and if they are permitted to be received in evidence, the same would clinch the issue. The documents sought to be filed clearly show the debts and liabilities of the petitioner.

Further, there was no bar in law to the filing of an application under Section 311 of Cr.P.C. even after the closure of evidence. Further, no prejudice would be caused to the respondent No.1, if the documents sought to be filed are received in evidence. The Court below ought to have allowed both the applications as prayed for and ultimately prayed to allow both the Criminal Revision Cases as prayed for.

5. On the other hand, the learned counsel for respondent No.1 would contend that the petitioner did not plead either in his counter filed in the subject Maintenance Case or in his evidence before the Court below about the documents that are sought to be filed on his behalf. Filing of the subject applications is nothing but a fluke attempt by the petitioner to fill up the lacunas in his evidence. The reason shown by the petitioner for non-filing of the documents at the earliest point of time is irrational. Further the documents sought to be received are subsequent to the filing of the subject maintenance case and thus, they have no bearing on the determination of the subject maintenance case. Though Section 311 of Cr.P.C. confers very wide discretionary power upon the Court, such discretion is to be exercised judiciously

and not arbitrarily and the Court must satisfy itself, that it is in fact essential to examine such a witness or to recall him for further examination, in order to arrive at a just decision of the case. Similarly, exercise of discretion by the Court in respect of a decision under VII Rule 14(3) of CPC is circumscribed by legal principles and not based on whims and caprice. The Court below rightly dismissed both the subject applications. The impugned orders of the even date, dated 07.05.2018, do not reflect patent defect or an error of jurisdiction or law. The contentions raised on behalf of the petitioners do not merit any consideration and ultimately prayed to confirm the impugned orders and dismiss the Criminal Revision Cases.

6. In view of the submissions made by both the learned counsel, the point that arises for determination in both these Criminal Revision Cases is as follows:

“Whether the impugned orders of the even date, dated 07.05.2018, passed in Crl.M.P.No.561 and 562 of 2018 in M.C.No.59 of 2013, by the learned Additional Metropolitan Sessions Judge for the Trial of JHCBBC-cum-Additional Family Court-cum-XXIII Additional Chief Judge-cum-IX Additional Metropolitan Sessions Judge,

Hyderabad, warrants interference of this Court in exercise of Revisional jurisdiction under Section 397 and 401 of Cr.P.C.?”

POINT:-

7. The material placed on record reveals that the respondent No.1 in both these revisions, being represented by her mother, filed the subject Maintenance Case against the petitioner, seeking maintenance. The petitioner herein deposed as RW.1 in the subject maintenance case and after recording his evidence, his evidence was closed. Subsequently, he filed the subject applications to recall him to mark certain documents and to receive the list of documents. Both the applications were dismissed by the Court below vide impugned orders of the even date, dated 07.05.2018. Aggrieved by the same, the petitioner filed both these Criminal Revision Cases.

8. Before proceeding further, let us examine the scope and intent of Section 311 of Cr.P.C. The scope and object of this provision is to enable the Court to determine the truth and to render a just decision, after discovering all relevant facts and

obtaining proper proof of such facts, to arrive at a just decision in the case. However, such power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 of Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 of Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. True it is that the very use of words such as 'any Court', 'at any stage', or 'or any enquiry, trial or other proceedings', 'any person'

and 'any such person' clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the Court in any way and thus, there is no escape if the fresh evidence to be obtained is essential to arrive at a the just decision of the case. The determinative factor should, therefore, be whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.

9. Fair trial is the main object of criminal procedure, and it is the duty of the Court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in

ensuring that there is no breach of the same. (See Talab Haji Hussain Vs. Madhukar Purshottam Mondkar and Another { AIR 1958 SC 376} ; Zahira Habibullah H. Sheikh and Another Vs. State of Gujarat and others { AIR 2004 SC 3114} ; Kalyani Baskar (Mrs.) Vs. MS Sampooram (Mrs .) { (2007) 2 SCC 258} ; Vijay Kumar Vs. State of UP and Another { (2011) 8 SCC 136} ; and Sudevanand Vs. State through CBI { (2012) 3 SCC 387}).

10. Similarly, the law with regard to the scope and extent of Order VII Rule 14(3) of CPC is well settled. The provision of Order VII of CPC existed prior to the amendment in 1999 and 2002 require the plaintiff to state and file a list of all the documents upon which he seeks to rely in the suit. The legislative philosophy underlying this statutory requirement is that in the adversarial litigative paradigm, the opponent or defendant should not be taken by surprise and the plaintiff must disclose the broad documentary evidentiary platform on which the plaintiff's claim is projected. This requirement is no doubt not inflexible. A plaintiff could, no doubt, be permitted to bring on record document(s) subsequent to the filing of the plaint also, but a reasonable cause must be shown. Order VII

Rule 14(3), as amended by the amendment Act of 1999, merely makes explicit what is inherent, namely, that due care should be exercised by the Court and grant of leave by the Court is a condition precedent for bringing a document on record subsequent to the filing of the suit. If grant of leave were to be a mechanical act, it was not necessary for the legislature to have invested a judicial authority for such a mechanical function. Exercise of discretion by the Court even in respect of a decision under Order VII Rule 14(3) is a discretion circumscribed by legal principles and not one based on whim or caprice.

11. In the light of the aforesaid settled legal preposition, if we look at the facts of the case on hand, the reason shown by the petitioner for not filing the documents at the time of deposing before the Court appears to be unreasonable. Had the documents which are sought to be subsequently filed were in existence as on the date of the petitioner deposing before the Court, he would have got marked the same on his behalf. Further, the petitioner never deposed in his evidence that there are certain documents in support of his case which were misplaced and that he would file the same as soon as

they are traced out. During his cross-examination of the petitioner, when the other side counsel had questioned about the transactions, he deposed that he has not filed any documents with regard to availing loans and discharging the same. At least at that time, the petitioner would have stated that there are certain documents in support of his case and that he would file the same. Further, there is a categorical finding of the Court below that the documents proposed to be marked appears to be subsequent to filing of the subject maintenance case. The Court cannot grant consent to recall a witness and permit him to file documents in a routine and clumsy manner. The discretion in this regard should be exercised judiciously and the Court must satisfy itself that recalling a witness is necessary for arriving at a just decision in the case. Even otherwise, the debts and liabilities of a father do not ipso facto absolve him of his moral duty to maintain his children. Further, a perusal of the documents that are sought to be filed would indirectly indicate the financial capability of the petitioner. In the circumstances of the case, this Court is of the considered opinion that the Court below rightly dismissed the application filed by the petitioner

under Section 311 of Cr.P.C. to recall him and mark some documents on his behalf, as the said documents are not, in any way, essential for arriving a just decision in the subject maintenance case.

12. Further, it is apt to mention here the object of the Revisional jurisdiction is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the Court to scrutinize the orders, which, on the face of them, bear a token of careful consideration and appear to be in accordance with law. Revisional Jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded are based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. Another well accepted norm is that the Revisional jurisdiction of the higher Court is very limited and cannot be exercised in a routine manner. Revisional Court has to confine itself to the legality and propriety of the findings of the subordinate Court and as to whether the subordinate Court acted within its jurisdiction. A Revisional Court has no jurisdiction to set aside the findings of

facts recorded by the learned Judge and impose and substitute its own findings. Sections 397 to 401 Cr.P.C., confer only limited power on the Revisional Court to the extent of satisfying about the legality, propriety or regularity of the proceedings or orders of the lower court and not to act like appellate Court for other purposes including the recording of new findings of fact on fresh appraisal of evidence.

13. The impugned orders of the Court below do not reflect patent defect or an error of jurisdiction or law. They are in accordance with law. Neither there is non-compliance of the provisions of law nor they are grossly erroneous. The findings recorded and the conclusions reached by the Court below are based on material on record and are not perverse or illegal. None of the contentions raised on behalf of the petitioner merit consideration. Both the Criminal Revision Cases are devoid of merit and are liable to be dismissed.

14. In the result, both the Criminal Revision Cases are dismissed. It is made clear that this Court has not expressed any opinion on the merits of the issues/questions that fall for determination in the subject maintenance case. Hence, the

trial Court shall dispose of the subject maintenance case, uninfluenced by the observations made in this common order which are made for the limited purpose of disposal of both these Criminal Revision Cases.

Miscellaneous petitions, if any, pending in both these Criminal Cases, shall stand closed.

JUVVADI SRIDEVI, J

31st January, 2023
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