(2010) 09 CAL CK 0064

Calcutta High Court

Case No: C.R.R. 1428 of 2009

Lakhi Prasad Shaw		APPELLANT
	Vs	
The State of West Bengal and Another		RESPONDENT

Date of Decision: Sept. 15, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 311, 313
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2011) 1 CHN 810

Hon'ble Judges: Syamal Kanti Chakrabarti, J

Bench: Single Bench

Advocate: Sandipan Ganguly and Mukesh Kr. Gupta, for the Appellant;Tirthankar Ghosh and Ranajit Roy for Opposite Party No. 2, for the Respondent

Final Decision: Dismissed

Judgement

Syamal Kanti Chakrabarti, J.
The present revisional application is directed against order dated 16.04.2009 passed by the Learned Metropolitan Magistrate, 9th Court, Calcutta in Case No. C-3575 of 2001 u/s 138 of the Negotiable Instruments Act rejecting prayer of the accused petitioner made u/s 311 Cr.P.C. for examination of 4 defence witnesses for just decision of the case.

2. Learned lawyer for the petitioner submits that in his application u/s 311 Cr.P.C. filed after closing of defence evidence on 31.03.2009 while the case was fixed for argument on 08.04.2009, the petitioner made a prayer u/s 311 Cr.P.C. for allowing him to examine following 4 witnesses:

i) Mr. Shamim, the person who had taken blank cheque leaf from the petitioner:

ii) Witnesses to test the authenticity of the purported certificate by the Motor Vehicles Department District Transport Office, Mukukchung, Nagaland;

iii) The Deutche Bank;

iv) Government Handwriting Expert to examine the signature on impugned cheque and purported Hire Purchase Agreement.

3. While considering such prayer the Learned Trial Court by order dated 16.04.2009 has rejected the prayer on the following grounds:

a) In Criminal Revision No. 126 of 2007 the accused petitioner was given last opportunity to adduce himself as DW;

b) As per findings of the Learned Chief Judge, City Sessions Court in the said Criminal Revision No. 126 of 2007 the accused is not entitled to get any further opportunity to tender other witness as expert himself;

c) As regards examination of handwriting expert such prayer was earlier rejected by the Learned Trial Court under order dated 23.08.2007 and subsequently confirmed by the order of the Learned Chief Judge, City Sessions Court, in the said revisional application and as such the same has reached its finality and cannot be reopened;

d) So far as the prayer for examining Mr. Shamim is concerned, the Learned Trial Court is of the view that as per available evidence on record and findings made by the Learned Chief Judge, City Sessions Court made in the said revisional application there is no scope for reconsideration of the same prayer by the Court below;

e) So far as two other points are concerned, i.e., witness to test the authenticity of certificate issued by the Motor Vehicle Department, Nagaland and examination by officials of the Deutche Bank, the Learned Trial Court is of the view that the same is not relevant for the purpose of the case; AND

f) The petition has been filed only to drag the case since the claim of the accused has already been decided by the revisional Court.

4. Admitted position of this case is that the accused petitioner has not moved the higher forum against the findings of the Learned Chief Judge, City Sessions Court in Criminal Revision No. 126 of 2007. This fact has been admitted in paragraph 5 of the revisional application. If the order passed by the revisional Court is accepted and complied with by the accused petitioner he cannot claim the same opportunity rejected by the revisional Court renewing same prayer u/s 311 Cr.P.C.

5. Learned lawyer for the opposite party No. 2 has contended that the findings of the revisional Court has reached its finality and the provisions laid down in Section 311

Cr.P.C. though can be claimed at any stage of the proceedings but should never be claimed to frustrate the findings of the revisional Court which has reached its finality.

6. There is also no denial that by order dated 23.08.2007 the Learned Trial Judge has rejected the prayer of the accused for sending his signature to the handwriting expert for its verification which has been disputed. But the same was rejected and confirmed by the Learned Chief Judge, City Sessions Court. Therefore, on grounds of prejudice and denial of fair trial the findings of the Learned Revisional Court which has reached its finality cannot be reopened u/s 311 Cr.P.C. as claimed by the petitioner.

7. From the materials on record I find that the case was instituted in 2001 and in course of examination u/s 313 Cr.P.C. the accused admittedly did not raise any point disputing his signature in the dishonoured cheque which was not returned by the bank concerned with the remark "drawers signature incomplete/ differs/required" as per serial No. 10 of Exhibit 4 as noted by the Learned Trial Court in his order dated 23.08.2007.

8. The Learned Trial Court has also rejected the prayer for examining officials of Transport Department, Government of Nagaland. In paragraph 10 of his petition the petitioner has claimed that in course of cross-examination of the petitioner as defence witness (DW 1) the prosecution has exhibited the certificate issued by the District Transport Officer, Mukukchung, Nagaland without examining any person competent to depose to prove issuance of such certificate for which such officer should be summoned for proper adjudication of the matter. In course of his cross examination (DW 1) the certificate in question was shown and marked Exhibit 13 with objection. So admissibility of such document and evidentiary value thereof is left open for consideration of the Learned Court at the time of final disposal. Exhibit 13 being a public document need not be proved by Government Officials of Nagaland for the purpose of adjudication of the matter and as such the Learned Court below is justified in refusing such prayer.

9. Learned lawyer for the petitioner has drawn my attention to the principles laid down in (2008) 2 SCC (Cri) 677 (T. Nagappa v. Y.R. Muralidhar); (2007) 1 SCC (Cri) 577 (Kalyani Baskar (Mrs.) v. M.S. Sampoornam (Mrs.)) in support of his contention that for just and fair trial guaranteed by the Constitution such type of prayer for examining the defence witness though belated should be allowed. I hold that the principles laid down therein are not applicable in the facts and circumstances of this case as the prayer for examining the other witnesses has been rejected by the Learned First Revisional Court against which the accused has not moved the higher forum on the contrary he has complied with the direction of the Learned Revisional Court and tendered himself as sole witness which was allowed by the revisional Court thereafter he cannot claim the same benefits which are rejected by the revisional Court under the garb of Section 311 Cr.P.C. which is the discretionary power of the Learned Trial Court and cannot be claimed as a matter of right by the defence. Moreover, in the instant case the onus lies upon the prosecution to prove their case and no onus lies upon the defence to disprove the case and as such the question of prejudice also cannot be raised after accepting the verdict of the first

revisional Court.

10. Considering all the facts and circumstances I hold, that there is no merit in this revisional application which is accordingly dismissed.

11. The interim order stands vacated. The Learned trial Court is directed to proceed with the case as per law and to dispose of the same within a period of three months from the date of communication of this order.

12. Urgent photostat certified copy of this order, if applied for, be supplied to the respective parties, upon compliance of all necessary formalities.