

Criminal Appeal No. 123 of 2017
CNR – WBCS01- 001688/2017

Present : Annada Sankar Mukhopadhyay (JO Code-WB 00863)
Addl. Dist & Sessions Judge,
1st Fast Track Court, Bichar Bhavan, Calcutta.

Order No. 57
Date : 02.12.2021

Today is fixed for passing order on the petition dated 02.02.2021 filed by the appellant praying for affording opportunity to the appellant to place and prove certain documents as additional evidence either by directing the Learned Magistrate to examine or such other order as this Court may deem fit and proper.

The contention of the petitioner/appellant is that the Learned Trial Court convicted the appellant/accused person under Section 138 of the Negotiable Instruments Act for the reasons that at the time of trial, the appellant was wrongly advised by the erstwhile conducting Learned Advocate for which some important documents listed therein were not proved or relied. Those were not traceable at the relevant point of time. The further contention of the appellant is that due to non production and inability to formally prove those documents, those are indispensable for proper appreciation and just decision of the present appeal and therefore, the opportunity be given to him to produce those documents, those were in existence at the time of transaction related to facts of the case and cannot be manufactured or tampered with.

Learned Advocate for the respondent while objecting the contention of the petitioner /appellant submitted that if Section 391 Cr.P.C. be read attentively, it will appear that this Court has the discretion to allow further adducing of evidence if found necessary in dealing with the appeal and the stage has not come yet. He had drawn attention of the Court to the evidence of the defence witnesses which is sufficient for the conviction of the accused/petitioner. He further submitted that the documents so intended to be produced are not at all necessary for the fair trial and meaningful adjudication of this case. He further referred to the list appended by the appellant in the instant petition and submitted that one of the documents have already been marked as Exhibit A and it appears that the appellant is trying to further drag the case in which he has been successful for last four years.

Learned Advocate has drawn attention to this Court about the order dated 09.10.2020 when last chance was given by this Court to the appellant and thereafter the instant petition was filed by the appellant and the intention of the delaying proceeding is very much clear from such action of the appellant. Learned Advocate of the respondent further submitted that there is complete lack of due diligence from the side of the appellant in moving this petition and proving those documents before the Learned Trial Court in an appropriate occasion and this instant petition is not bonafide in nature and be rejected with cost.

I have perused the materials on record, the Judgement of the Learned Trial Court and the petition and considered the rival submissions. Section 391 Cr.P.C. empowers this Appellate Court to take further evidence or direct it to be taken if the Court thinks that additional evidence is necessary for the proper adjudication of the appeal. It is fact that while hearing the appeal, if Court thinks that until and unless further evidence is given, the meaningful adjudication of the case is not possible, the Court shall allow for adducing further evidence and the Appellant Court may himself record the evidence. This is a discretionary power and such discretion should be judicial and should be supported by a reasoned order. The intention of Legislature in enacting this Section is to empower the Appellate Court

to see that justice is done between the prosecutor and the person prosecuted and if the Appellate Court finds that certain evidence is necessary to enable the Court to give a correct finding, it would be justified for the Court in taking action under this Section. The Hon'ble Court in a decision reported in 1969 CrLJ 1153 held that the section is not intended to remedy negligence and laches on the part of the litigants. The Hon'ble Supreme Court in a case reported in AIR 2001 SC 2120 held that :

“It is concept of justice which ought to be prevailed and in the event, the same dictates exercise of power as conferred by this Court, it therefore ought not to be any hesitation in that regard. Section 391 Cr.P.C. was introduced in the Statute Book for the purpose of making it available to the Court, not to fill up any gap in the prosecution case but to oversee that the concept of justice does not suffer.”

On careful and attentive perusal of the L.C.R. as well as the appeal, this Court finds that at this stage the Court does not find that any recording of further evidence is necessary for proper and meaningful disposal of this appeal giving a fair trial to both sides. It is fact that this appeal was filed in the year 2017 and the appellant has taken so many chances to prolonging the appeal which compelled this Court to pass order No. 29 dated 09.10.2020 granting a last chance to the appellant and an order on merit will be passed which paved the way to the petitioner to file the instant petition.

On perusal of the list appended to this petition, this Court finds that at this stage, those documents have no relevance in disposal of this appeal and necessity to come to a conclusion. Having considered the entire materials on record and the submissions of the appellant as well as the respondent, this Court finds that the petition of the petitioner/appellant has no merit to stand at this stage and is liable to be rejected. Accordingly, the petition dated 02.02.2021 filed by the appellant is rejected on contest.

Fixing 22.12.2021 for hearing of the appeal of both sides since the appeal is pending for more than four years. Learned Advocates of both sides are requested to come prepared on the next date.

D/ C by me.

Addl. Dist. & Sessions Judge,
1st Fast Track Court ,
Calcutta.

Addl. Dist. & Sessions Judge,
1st Fast Track Court ,
Calcutta.