

(2000) 09 AP CK 0070

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 1316 of 2000

Balaji Estates and Another

APPELLANT

Vs

Shivani Alloys Steel Castings (P) Ltd. and Another

RESPONDENT

Date of Decision : 04-09-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2000) 2 ALD(Cri) 523 : (2000) 2 ALT(Cri) 436 : (2001) CriLJ 631

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : C. Praveen Kumar, for the Appellant; P.P., for the Respondent

Final Decision : Dismissed

Judgement

Vaman Rao, J.—This petition u/s 482, Cr.P.C. seeks to challenge the order passed by the learned Metropolitan Sessions Judge, Hyderabad dated 31-1-2000 in Crl. R.P. No. 215 of 1999 under which the order of the learned XXIII Metropolitan Magistrate, Hyderabad passed in Crl. M.P. No. 6731 of 1999 allowing the application of complainant for recalling of P.W. 1 for marking certain documents was allowed.

2. The petitioners herein are the accused in C.C. No. 791 of 1998 facing prosecution for an offence u/s 138 of the Negotiable Instruments Act. The complainant's case is that the cheque, which was dishonoured and in respect of which the accused are sought to be prosecuted, was issued by them towards the cost of 811 cement bags supplied by the complainant to them. The complainant examined himself as PW-1 and closed his evidence. During cross-examination of PW. 1 it appears a defence was sought to be put forth that the cement bags in respect of which the cheque is said to have been issued were not supplied at all. In the light of this line of defence, the complainant filed the present petition in Crl. M.P. No. 6731 of 1999 for recalling PW. 1 and to mark certain documents with a view to establish the supply of the cement bags like invoice and delivery

challan and a certificate of an auditor of the complainant's firm that this supply is shown in the accounts. The learned magistrate allowed this application. Criminal Revision Petition preferred against the order passed by the learned Magistrate has been dismissed by the learned Metropolitan Sessions Judge.

3. The learned counsel for the petitioners contends that after evidence has been closed, allowing the complainant to reopen the case and further examine P.W. 1 and mark documents in question would amount to allowing the complainant to fill up the gaps in his case and depriving the accused of the advantage appearing from the evidence of the prosecution as now stands.

4. The learned counsel for the respondents counters this contention by pointing out that recalling of P.W. 1, who is no other than the complainant himself, for the purpose of marking the documents above mentioned cannot be construed as filling up lacuna. Recalling of the witness for marking of documents was, according to the learned counsel, found necessary to meet the line of defence which was indicated during cross examination of PW. 1.

5. The fact that the complainant has supplied some cement bags to the accused is an assertion already made in the complaint and is not being brought up for the first time through the petition in question. As held by the Supreme Court in the case of *Rajendra Prasad v. Narcotic Cell* through its Officer-in-charge, Delhi (Supreme Court) reported in (1992) 2 ALD 345 lacuna in the prosecution case must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. Thus, where the prosecution has not adverted to an aspect of the case at all and it is sought to be brought up for the first time and which is prejudicial to the accused, such material alone can be considered as meant for filling the lacuna but where as held by the Supreme Court some evidence which was not brought on record due to inadvertence and is sought to be brought on record at a later stage, this in itself cannot be construed as an attempt to fill up the gaps in the prosecution case.

6. In this case, the assertion as to supply of the cement bags by the complainant to the accused in respect of which the cheque has been issued is very much a part of the complainant's case as set up in the complaint. Mere omission to bring on record certain documents which evidences such supply of cement when PW-1 was examined earlier cannot be a ground for refusing the "request of the complainant for recalling PW-1 for marking these documents.

7. Under these circumstances, the order of the learned Metropolitan Sessions Judge dismissing the Criminal Revision petition against the order of the learned Magistrate is eminently proper. This petition is accordingly dismissed.