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**(2022) 06 TEL CK 0024**

**In the Telangana High Court**

**Case No :** Criminal Petition Nos.3948, 3949 Of 2022

M/S. Shree Kedarnath Sugar Agro Products Ltd.

APPELLANT

Vs

State Of Telangana

RESPONDENT

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**Date of Decision :** 07-06-2022

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 311, 391, 482  
Negotiable Instruments Act, 1881 — Section 138

**Citation :** (2022) 06 TEL CK 0024

**Hon'ble Judges :** K. Lakshman, J

**Bench :** Single Bench

**Advocate :** Pawan Kumar Agarwal

**Final Decision :** Dismissed

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## **Judgement**

1. Heard Mr. Pawan Kumar Agarwal, learned counsel for the petitioners, Mr. C. Sharan Reddy, learned counsel for respondent No.2 and learned Assistant Public Prosecutor appearing on behalf of respondent No.1 - State in both the petitions.

2. Criminal Petition No.3948 of 2022 is filed under Section - 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), to quash the order dated 18.02.2022 passed in CrI.M.P. No.70 of 2022 in CrI.A. No.223 of 2019 by the learned IV Additional Metropolitan Sessions Judge, Hyderabad, while CrI.P. No.3949 of 2022 is filed to quash the order dated 18.02.2022 passed in CrI.M.P. No.71 of 2022 in CrI.A. No.222 of 2019 by the very same Court.

3. Lis involved in both the criminal petitions and the parties are one and the same and, therefore, both the petitions are heard together and are being disposed of by way of a common order.

4. Perusal of the record would reveal that the petitioners herein are accused in C.C. Nos.199 and 200 of 2012, while respondent No.2 herein is the complainant. The offence alleged against the petitioners herein - accused is under Section - 138 of the Negotiable Instruments Act, 1881 in both the cases. Vide judgment

dated 04.02.2019, the Court below convicted the petitioners herein for the said offence in both the cases. Aggrieved by the said judgments, the petitioners herein have preferred appeals vide CrI.A. Nos.223 and 222 of 2019 respectively, pending on the file of IV Additional Metropolitan Sessions Judge, Hyderabad.

5. During the pendency of the aforesaid appeals, the petitioners herein have filed an application under Section - 391 read with 311 of the Cr.P.C. vide CrI.M.P. Nos.70 of 2022 and 71 of 2022 in CrI.A. Nos.223 of 2019 and 222 of 2019, respectively, seeking permission to file documents as mentioned in the list of documents and to lead additional evidence in the said appeals. The appellate Court, vide orders, both dated 18.02.2022, dismissed the said applications. Challenging the said orders, the petitioners herein have filed the present criminal petitions.

6. The petitioners herein have filed the above said applications under Section - 391 read with 311 of the Cr.P.C. on the following grounds:

i) Petitioner No.2 - Accused No.1 is the signatory to the cheque in dispute and he had signed as Managing Director of accused No.1 Company;

ii) Petitioner Nos.2 to 4 - accused Nos.2 to 4 are only Executive Directors and they are not responsible for the day-to-day affairs of the said Company;

iii) During the pendency of the aforesaid appeals, a Company Petition, under the provisions of Insolvency and Bankruptcy Code, 2016, was filed, an Interim Resolution Professional (IRP) was appointed;

iv) Respondent No.2 herein had also filed a civil vide O.S. No.814 of 2021 on the file of II Additional Chief Judge, City Civil Court, Hyderabad, and the same was decreed;

v) In view of the above, the petitioners herein want to file resignation letter dated 15.10.2008; extract of Board of Resolution, dated 08.11.2008 of accused No.1 Company; Form No.23 pertaining to accused No.1 company; copy of order passed in C.P. (IB) No.2851/MB/2018 and also copy of the judgment and decree dated 02.02.2015 in O.S. No.814 of 2012.

7. The aforesaid application was opposed by respondent No.2 herein in both the appeals on the ground that the petitioners herein were aware of the said facts including the fact that those documents were in their custody only, even then, they have not filed the said documents during the pendency of C.Cs. All the said facts were considered by the appellate Court and, as such, there is no error in the impugned orders.

8. Perusal of the record would reveal that respondent No.2 herein was examined as PW.1. On behalf of the petitioners herein, they have not examined any witness and they have not filed any document. PW.1 was cross-examined at length thrice i.e., 20.11.2017, 18.07.2018 and 14.08.2018. During the cross-examination on 20.11.2017, the petitioners herein have specifically posed certain questions with

regard to the details of the Directors, proceedings of ROC including Exs.P9 and P9 (a). The judgment of the trial Court is dated 04.02.2019. By the said date, the petitioners herein came to know about the above said proceedings. The said proceedings / documents were in the custody of the petitioners herein during the pendency of the C.Cs and also by the date of pronouncement of the judgments in the said C.Cs. i.e., 04.02.2019. Even then, the petitioners herein have not filed the said documents before the trial Court in the said C.Cs. The only explanation offered by the petitioners herein is that accused No.2, who is the Managing Director of accused No.1 Company and father of petitioner Nos.2 and 4 and the husband of petitioner No.3, used to look after the entire affairs of the said Company and they are unaware of the same and, therefore, they have not filed those documents during the pendency of the aforesaid C.Cs.

9. As stated above, petitioner Nos.2 to 4 herein came to know about the said documents during the pendency of the said C.Cs. itself, and the said documents were in their possession only, even then they have not filed the said documents before the trial Court. Further, the offence alleged against the petitioners herein is under Section - 138 of the N.I. Act. To prove the said offence, initial burden lies on respondent No.2 herein that cheques in dispute were issued by the accused in discharge of their legally enforceable debt and, thereafter, it shifts upon the accused. There is no dispute that the cheques belong to accused No.1 Company and accused No.2 being the Managing Director of accused No.1 Company had signed on the said cheques.

10. Learned counsel for the petitioners herein have placed reliance on the decision rendered by the Hon'ble Supreme Court in *Brig Shkhjeet Singh (Retd) MVC v. State of Uttar Pradesh* 2019 (16) SCC 712, wherein the Apex Court held that there are no fetters on the power under Section - 391 of the Cr.P.C. of the appellate Court. All powers are conferred on the Court to secure ends of justice. The ultimate object of judicial administration is to secure ends of justice. Court exists for rendering justice to the people. There is no dispute with regard to the powers of the appellate Court under Section - 391 of the Cr.P.C. and there is no quarrel with regard to the said principle. But, in the present case, the appellate Court has dismissed the application on the ground that the petitioners herein have not given proper reasons for not filing the documents during the pendency of the proceedings before the trial Court. Therefore, the facts of the said case are different to the facts of the present case.

11. As discussed above, though the petitioners herein have cross-examined respondent No.2 herein (PW.1) at length thrice, they have not filed the said documents during the pendency of the aforesaid C.Cs. before the trial Court. The appellant Court had considered all the said aspects and dismissed both the applications vide order dated 18.02.2022. It is a reasoned order and there is no error in it warranting interference by this Court. Further, the petitioners herein have not made out any case to set aside the order under challenge. Therefore, both the petitions fail and are liable to be dismissed.

12. Both the Criminal Petitions are accordingly dismissed confirming the orders, both dated 18.02.2022 passed in Crl.M.P. Nos.70 and 71 of 2022 in Crl.A. Nos.223 and 222 of 2019, respectively, by the learned IV Additional Metropolitan Sessions Judge, Hyderabad.

As a sequel, the miscellaneous petitions, if any, pending in the criminal petitions shall stand closed.