

HIGH COURT OF SIKKIM
Record of Proceedings

CRL. A. No. 35 of 2018

SANCHA BAHADUR SUBBA

APPELLANT

VERSUS

RAMESH SHARMA

RESPONDENT

Date: 01.11.2019

CORAM:

THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

For Appellant

Mr. Raghvendra Kumar, Advocate.
Mr. Umesh Ranpal, Advocate.
Ms. Sanju Gupta, Advocate.

For Respondent

Mr. S.S. Hamal, Advocate.
Mr. Leada Tshering Bhutia, Advocate.
Ms. Sabina Chettri, Advocate.

ORDER

Heard on I.A. No.1 of 2018 which is an application filed by the Appellant under Section 391 of the Code of Criminal Procedure, 1973 ('Cr.P.C., 1973') seeking permission to adduce additional documents at the appellate stage. By an additional Affidavit filed, it was submitted therein that the list of documents to be brought in as additional evidence from the records of G.R. Case No.327 of 2015 (*State of Sikkim v. Ramesh Sharma*), are as follows;

1. Money Receipt dated 10.04.2014 for a sum of Rs.10,00,000/- (Rupees ten lakhs) only.
2. Money Receipt dated 10.04.2014 for a sum of Rs.2,70,000/- (Rupees two lakhs and seventy thousand) only.
3. Money Receipt dated 10.04.2014 for a sum of Rs.30,00,000/- (Rupees thirty lakhs) only.
4. Submission of Exhibits for forensic analysis along with list of Exhibits sent for examination dated 27.01.2015 by the Authorizing Officer Mr. Karma Gyatso Bhutia to the Director, RFSL, Sikkim, Saramsa, Ranipool.
5. Report of the RFSL, Sikkim dated 20.02.2015 along with reasons of opinion dated 20.02.2015.

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6. Specimen signatures of Ramesh Sharma appended with the RFSL Report dated 20.02.2015.

That, the said documents are necessary for complete and final adjudication in the matter as the Money Receipts and the RFSL Reports would conclusively prove the case against the Respondent herein. Admitting that the existence of the documents was in the knowledge of the Appellant, it was contended that inadvertence to file the same before the learned trial Court should not lead to an incomplete adjudication in the matter. The Affidavit, it is urged was made *bona fide* for the purpose of complete justice between the parties and hence be allowed in the interest of justice.

Strongly refuting the prayers in the petition and the submission of learned Counsel for the Appellant, learned Counsel for the Respondent would contend that vide Order dated 11.11.2016 of the learned Chief Judicial Magistrate, East and North Sikkim at Gangtok, in P.C. Case No.30 of 2015, the application filed by the Appellant under Section 91 of the Cr.P.C., 1973 in P.C. Case No.14 of 2015 was considered wherein the Appellant (the Complainant before the Court of the learned Chief Judicial Magistrate) had prayed for calling of three original documents i.e.

1. Original written agreement dated 07.11.2014;
2. Original Cheque bearing No.031570 dated 30.12.2014 for Rs.10,00,000/- (Rupees ten lakhs) only, drawn on IDBI Bank; and
3. Original Return Memo of IDBI Bank, Gangtok Branch dated 30.12.2014.

At no stage of the proceedings did the Appellant herein make an effort to call for any other document besides the documents as listed hereinabove. Only on the acquittal of the Respondent an effort is being made to fill the lacuna in the Appellant's case by seeking to file documents listed in the petition under Section 391 of the Cr.P.C., 1973. That, in fact the documents as sought to be brought in by way of additional evidence was seized from the possession of the Appellant and therefore he had full awareness and knowledge of the existence of the documents

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and could well have sought to file the documents, in the petition under Section 91 of the Cr.P.C., 1973, filed before the learned Chief Judicial Magistrate. Hence, this petition deserves no consideration and ought to be dismissed.

I have considered at length the submissions put forth by learned Counsel for the parties.

Undeniably the Appellant was aware of the existence of the documents which he seeks to adduce as additional evidence vide the petition filed under Section 391 Cr.P.C., 1973. It is not denied that the documents were in the possession of the Appellant and seized therefrom. Records reveal that in the petition before the learned Chief Judicial Magistrate under Section 91 of the Cr.P.C., 1973 only three documents have been sought. It obtains that despite awareness of the existence of the documents, the Appellant did not consider it relevant for the present purposes. Consequently, the Appellant cannot at the appellate stage seek to bring additional documents of which he was aware at the stage of trial. In my considered opinion, this is an effort by the Appellant to fill in the lacuna in his case.

Consequently, the petition under Section 391 Cr.P.C., 1973 stands dismissed and I.A. No.1 of 2018 disposed of accordingly.

In view of the intervening winter vacation, list for final hearing on 22.02.2020.

Judge
01.11.2019