

B [TARUN CHATTERJEE AND V.S. SIRPURKAR, JJ]

s. 397(2) – Criminal revision – Challenging order of trial court rejecting applications u/ss 91 and 311 for production of documents and recalling the witness – Allowed by High Court without giving notice to complainant – HELD: Documents sought for, being personal documents of complainant, he should have been given an opportunity of hearing – Besides, orders passed by trial court on applications u/ss 91 and 311 being interlocutory in nature, revision applications were not maintainable – Orders of High Court set aside – Practice and Procedure.

In a complaint case arising out of dishonour of cheque, after the complainant had been examined and cross-examined, the accused filed applications u/s 91 and s.311 CrPC seeking direction to produce the Bank Pass Books, Income Tax Accounts and LDS deposit receipts of the complainant and to recall him for cross-examination. The trial court rejected the applications, but the High Court in criminal revisions filed by the accused, allowed the applications. Aggrieved, the complainant filed the appeals.

HELD: 1.1 The High Court did not even issue notice to the appellant/complainant and held that the production of the documents sought for would cause no prejudice

to him. The documents in possession of the appellant/ A complainant were his personal documents; their production was rejected by the trial court, and the High Court before ordering their production, should have atleast given a hearing to the appellant/complainant. He could have shown, firstly, that no such documents existed B or that there was no basis for the production of those documents, particularly, in view of the fact that he was not even cross-examined in respect of those documents. [para 3] [513-B-C-D]

1.2 The High Court also failed to consider that the C order passed by the trial court refusing to call the documents u/s 91 CrPC and rejecting the application u/s 311 Cr.P.C. to recall the witness, were interlocutory orders and as such, the revision against those orders was D clearly barred u/s 397(2) Cr.P.C. The trial court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent/accused and the only defence that was raised, was that his signed E cheques were lost and that the appellant/complainant had falsely used one such cheque. The trial court also recorded a finding that the documents were not F necessary. This order did not, in any manner, decide anything finally. [para 4] [513-E-F-G]

1.3 In the circumstances, the High Court could not F have interfered in revisional jurisdiction. The judgment of the High Court is clearly incorrect in law and is set aside. [para 4] [514-B]

CRIMINALAPPELLATE JURISDICTION :Criminal Appeal G No. 486-487 of 2009

From the Judgement and Order dated 18.11.2004 of the Hon'ble High Court of Madras in Criminal Revision Case No. 1823 & 1824 of 2004.

A S. Ravi Shankar, Yamunah Nachiar, Jaya Kedia, for the Appellant.

Manish Kumar Saran, for the Respondent.

The Judgement of the Court was delivered by

B **V.S. SIRPURKAR, J.**

1. Leave granted.

C 2. In these appeals, the common order passed by the Learned Single Judge of the Madras High Court in three Criminal Revisions, is in challenge. By the instant order, the Learned Single Judge set aside the three orders passed by the Trial Court dated 26.7.2004 in CrI.M.P. No. 3057 of 2004 in C.C. No. 216 of 2003 and dated 1.4.2004 in CrI.M.P. Nos. 4184 and D 4185 of 2004 in C.C. No. 215 of 2003, and allowed those CrI.M.Ps. Shortly stated, the appellant herein had filed a criminal complaint under Section 200 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.' for short), complaining E therein that a cheque signed by the respondent and given for returning the amount of Rs.2 lakhs, which was a loan, was bounced and inspite of the notice given thereafter, the accused (respondent herein) had failed to return the money. A Trial F ensued on the basis of this complaint and the complainant (appellant herein) was examined as a first witness for the prosecution on 24.8.2004. He was cross-examined also. On 20.9.2004, the respondent herein filed applications under Section 91 Cr.P.C. and Section 311 Cr.P.C., seeking directions to produce the Bank Pass Books, Income Tax Accounts and G the L.D.S. deposit receipts of the appellant, as also for recalling him for cross-examination. This was objected to by a Reply dated 24.9.2004. The Court passed an order on 1.10.2004, rejecting the applications made by the respondent/accused. The H respondent/accused filed Criminal Revisions before the High Court under Section 397 Cr.P.C. and the High Court, by the

impugned common order, proceeded to allow the same. It is A
this order, which has fallen for consideration before us in these
appeals.

3. Very strangely, the High Court did not even issue notice
to the appellant/complainant, on the spacious ground that the B
production of the documents, which was sought for by the
accused, would cause no prejudice to the appellant/complainant.
We fail to understand this logic. After all, if the documents in
possession of the appellant/complainant, which were his C
personal documents, sought for by the accused and the
production of which was rejected by the Trial Court, and which
were ordered to be produced by the High Court, at least a
hearing should have been given to the appellant/complainant.
He could have shown, firstly, that no such documents existed or
that there was no basis for the production of those documents, D
particularly, in view of the fact that he was not even cross-
examined in respect of those documents. On this ground, the
order of the High Court would have to be set aside.

4. Secondly, what was not realized was that the order E
passed by the Trial Court refusing to call the documents and
rejecting the application under Section 311 Cr.P.C., were
interlocutory orders and as such, the revision against those
orders was clearly barred under Section 397(2) Cr.P.C. The Trial
Court, in its common order, had clearly mentioned that the F
cheque was admittedly signed by the respondent/accused and
the only defence that was raised, was that his signed cheques
were lost and that the appellant/complainant had falsely used
one such cheque. The Trial Court also recorded a finding that G
the documents were not necessary. This order did not, in any
manner, decide anything finally. Therefore, both the orders, i.e.,
one on the application under Section 91 Cr.P.C. for production
of documents and other on the application under Section 311
Cr.P.C. for recalling the witness, were the orders of interlocutory H

- A nature, in which case, under Section 397(2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are
- B allowed.

R.P.

Appeals allowed.