Tripura High Court
Sri Milan Paul vs Smt. Rikta Paul on 1 June, 2022

HIGH COURT OF TRIPURA
AGARTALA
Crl. Rev. P No.43 of 2021

Sri Milan Paul,
Son of late Suresh Chandra Paul,
Resident of Belonia Town, P.S-Belonia, South Tripura,
..... Accused-Petitioner(s).

Vs.

1. Smt. Rikta Paul,
Wife of Late Sankar Sarkar,
Resident of Jail Road, Belonia, District-South Tripura.

2. The State of Tripura,
Represented by the Ld. Public Prosecutor,
High Court of Tripura, Agartala
..... Respondent(s

BEFORE THE HON'BLE MR. JUSTICE S. G. CHATTOPADHYAY For Petitioner(s) : Mr. Sankar Kr. Deb, Sr. Advocate.

Mr. S. Datta, Advocate.

Ms. Riya Chakraborty, Advocate.

For Respondent(s) : Mr. Ratan Datta, Public Prosecutor.

Mr. Samar Das, Advocate.

Date of hearing	:	23.02.2022
Date of Judgment & Order	:	1st June, 2022.
Whether fit for reporting	:	YES.

J U D G M E N T AND O R D E R

This Criminal Revision Petition is directed against the impugned order dated 27.07.2021 passed by the learned Sessions Judge in Criminal Revision No.06 of 2019 affirming the order dated 14.06.2019 passed in N.I Case No. 11 of 2016 refusing to grant further adjournment in favour of the petitioner (accused) to adduce evidence of defence witnesses.

[2] Heard Mr. S. K. Deb, learned Sr. Advocate appearing for the petitioner along with Ms. Ria Chakraborty, Advocate. Also heard Mr. Samar Das, Crl. Rev. P. No.43/2021.

Page - 2 of 15 learned counsel appearing for the private respondent and Mr. Ratan Datta, learned Public Prosecutor representing the State.

[3] Short question involved in this criminal revision petition is about the correctness of the impugned order passed by the learned Chief Judicial Magistrate, South Tripura, Belonia refusing to allow further chance to the accused (petitioner herein) for adducing evidence of defence witnesses. [4] Factual background of the case is as under:

Smt. Rikta Paul Sarkar, wife of Late Sankar Prasad Sarkar alias Sankar Sarkar of Baidya Tilla, Belonia lodged a written complaint in the Court of the Chief Judicial Magistrate at Belonia on 20.07.2016 alleging, inter alia, that accused Milan Paul, a business man, had taken loan of a sum of rupees ten lakhs from the husband of the complainant in July, 2013. In order to repay the loan accused Milan Paul had issued cheque No. 322197 dated 04.09.2015 (Exbt.1) drawn on State Bank of India in the name of said Sankar Sarkar, husband of the complainant. Since the complainant and her husband maintained their bank accounts in State Bank of India at its Belonia branch, her husband had presented the cheque to SBI at the Belonia branch for encashment on 15.09.2015. But the cheque was returned unpaid for the reason that amount available in the account of the accused was not sufficient for encashment of the cheque. Complainant's husband sent statutory notice to the accused through his lawyer demanding payment of the amount of the cheque which was dishonoured by the bank. Despite receiving notice accused neither replied nor paid the money. [5] Husband of the complainant died at Chennai during his treatment at St. Isabel Hospital in Chennai on 10.04.2016. After the death of her husband Crl. Rev. P. No.43/2021.

Page - 3 of 15 complainant returned to Agartala on 07.06.2016 and obtained survival certificate from the competent authority. While she was searching for the papers relating to bank deposits of her deceased husband, she noticed the bounced cheque and the connected papers. She immediately contacted her lawyer and handed over the papers to him. As a result, some delay occurred in filing the complaint at the Court.

[6] The order passed by the trial Court would demonstrate that initially the trial Court declined to admit the complaint petition for hearing mainly on the ground that complaint was not filed by the holder of the cheque and there was no provision in N.I Act to deal with an application for condonation of delay. The Trial Court recorded these findings in its order dated 20.07.2016 and dismissed the complaint.

[7] Being aggrieved by and dissatisfied with the said order dated 20.07.2016, complainant petitioner preferred a criminal revision being Criminal Revision No.13 of 2016 in the Court of the Sessions Judge, South Tripura, Belonia. By order dated 27.03.2017, the Sessions Judge affirmed the said order dated 20.07.2016 passed by the trial Court. The relevant portion of the order of the leaned Sessions Judge is as under:

> "[7] In the case at hand, the admitted position is that, the complainant Smt. Rikta Pal Sarkar is neither payee nor holder in due course as defined in Section 7 and 9 of the N.I Act respectively. Therefore, not competent to file the complaint. Meaning

thereby, in criminal court the complainant has no remedy."

[8] Aggrieved petitioner then approached this Court by filing Criminal Revision Petition No.33 of 2017.

Crl. Rev. P. No.43/2021.

Page - 4 of 15 [9] This court by order dated 09.08.2017 in Criminal Revision Petition No.33 of 2017 held that complainant was entitled to file complaint under Section 138 N.I Act in the given fact situation. The matter of condoning delay was however left to the discretion of the trial Court. The order of this Court passed in Criminal Revision Petition No.33 of 2017 is as under:

"13. The petitioner being the legal heir is therefore the holder in due course of the cheque and as such a complaint can be entitled to be treated as maintained by the petitioner but whether the delay as occurred in filing the complaint would be condoned or not, would be decided by Chief Judicial Magistrate in as much as under the proviso to Section 142(b) of the N.I. Act, it is requisite that the explanation must satisfy the Magistrate to get the delay condoned.

14. Having observed thus, the impugned order dated 27.03.2017 delivered in Criminal Revision 13 of 2016 is set aside and as consequent thereupon, the order dated 20.07.2016 passed by the Chief Judicial Magistrate, South Tripura, Belonia stands quashed. The case is remitted to the Chief Judicial Magistrate to act in terms of this order.

In the result this petition stands allowed."

[10] Pursuant to the order of this Court the learned Trial court decided the matter regarding condonation of delay by registering case No. Misc.(N.I) 52 of 2017. The trial Court after hearing the parties represented by their counsel passed an elaborate order on 02.04.2018 condoning the delay of 232 days in filing the complaint which reads as under:

"02.04.2018 ****** Starting from the day on which late husband of the complainant first visited Chennai till the day of his death, it is prudently accepted that owing to such a condition he was in no position to file the complaint before the Court and after his death till filing of the instant complaint, I find the period to have been reasonably explained as the present complainant lost her husband and was not in a position to appear before the Court immediately there-after. Apart from the above, it is also accepted that the complainant required some reasonable time to know about the alleged transaction of her late husband and collect the relevant documents.

Crl. Rev. P. No.43/2021.

Page - 5 of 15 In view of the above, i find it right to decide the present issue in favour of the complainant and consequently allow her petition.

In the result, the delay of 232 days in filing the complaint is hereby condoned.

The original case shall proceed as per law and so far as the instant Misc. Case is concerned, it is disposed of and allowed on contest."

[11] Having condoned the delay, the trial court admitted the complaint for hearing on 26.07.2018. The substance of accusation was read over and explained to the accused in terms of Section 251 Cr. P. C. Accused denied the charge and claimed trial.

[12] In the course of trial the complainant examined herself as PW-1. After several adjournments accused was examined under Section 313 Cr. P. C on 17.01.2019. The memorandum of his examination under Section 313 Cr. P.C indicates that accused abjured his guilt and claimed that the charge was foisted on him. He however, desired to adduce evidence on his defence. [13] Case was first posted for recording the evidence of the defence witnesses on 15.03.2019. Thereafter, several adjournments were granted by the trial Court for different reasons. Ultimately, the case was listed for defence witnesses on 14.06.2019. The trial Court passed the impugned order on 14.06.2019 refusing to allow further opportunity to the accused for adducing defence witness. The impugned order dated 14.06.2019 reads as under:

> "14.06.2019 Ld. Advocate on behalf of the complainant Mr. S. Majumder is present.
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> Ld. Advocate Mr. S. R. Biswas on behalf of the accused is present.
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> Today is fixed for DWs but no DW turned up.

Ld. Advocate on behalf of the accused filed one adjournment petition on the ground mentioned in the adjournment petition. The said petition is neither Crl. Rev. P. No.43/2021.

Page - 6 of 15 supported by any document not verified. I also find in the petition that some of the name of witnesses listed for issuing summons but their address is not given properly. Moreover this is a complaint case, parties has to produce their witnesses on their own and from the record I also find that same petition has been rejected vide order dated 15.03.2019.

Considering the above fact and circumstances the petition filed by the accused side is hereby rejected at the very threshold.

Thus, the chapter of DWs is hereby closed."

[14] The case was then listed for hearing arguments. The accused challenged the order by filing Criminal Revision No.06 of 2019 in the Court of the Sessions Judge, South Tripura at Belonia. The learned Sessions Judge decided the criminal revision by order dated 27.07.2021 whereby the

learned Sessions Judge uphold the order of the trial Court and dismissed the criminal revision. The order passed by the learned Sessions Judge in the criminal revision reads as under:

> "27.07.2021.
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> ******I have also perused the judgment relied upon by learned counsel for the revision petitioner and in this judgment, the Hon'ble High Court of Madras has discussed about Section 243(2) of Cr. P.C and this relates to the trial of warrant cases by the Magistrate. So this judgment cannot be taken into consideration because the case before this court is a summons case based on the complaint of the complainant.
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> This court is of the opinion that learned trial court has rightly rejected the petition on the ground that the instant case is a complaint case wherein parties are under the obligation to adduce evidences on their own accord. There cannot be two standards for complainant and accused. As per the summons trial based on the complaint, complainant is asked to adduce or produce his witnesses and similar procedure will be applicable for the defence also. So the defence has to call his witnesses and if the witnesses are not coming before the court despite of his efforts, then he may make prayer before the court for issuing summons. But the revision petitioner has not shown any ground in his petition before the trial court that he took any initiative for calling his witnesses. This court also finds that petitioner has also changed his stand as in the first petition he cited nine witnesses including accused and in next petition he has cited only six witnesses. Accordingly, this court is of the opinion that learned trial court has rightly passed the order and this revision petition does not have any merit to entertain.
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> The revision petition is thus rejected.****"

Crl. Rev. P. No.43/2021.

Page - 7 of 15 [15] Aggrieved by and dissatisfied with the said order accused Milan Paul, being petitioner, has filed this criminal revision petition mainly on the ground that the trial Court by refusing to issue summons to the witnesses of the accused petitioner (DW) had denied the constitutional right of the accused to defend himself in a criminal proceeding. Therefore, the accused petitioner sought for the following reliefs:

> (i) For issuing rule against the complainant respondent to show reason as to why order dated 14.06.2019 passed by the trial Court and order dated 21.07.2018 passed by the learned Sessions Judge affirming trial Court's order shall not be reversed.
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> (ii) For issuing notice calling upon the respondents.
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> (iii) For calling for the records of the trial Court.

(iv) for granting interim relief staying the proceedings before the trial court.

[16] Appearing for the accused petitioner, Mr. S. K. Deb, learned Sr. Advocate argues that the provisions of the Code of Criminal Procedure, 1973 applies to the trial of a case under the N. I Act. Counsel contends that under Sub Section (2) of Section 243 Cr. P.C it is mandatory on the part of the trial Court to issue process to the defence witnesses when the accused applies for the same, unless it appears to the court that application for issuing process to witnesses has been made by the court for the purpose of vexation or delay or for defeating the ends of justice. Section 243(2) Cr. P.C casts a duty on the trial Court to record reasons when application for issuing process to the witnesses is refused. In support of his contention counsel has relied on the decision of the Apex Court in the case of Kalyani Baskar (Mrs.) Vrs. M. S. Sampoornam(Mrs.); reported in (2007) 2 SCC 258. In this case, accused in a case under Section 138 N.I. Act Crl. Rev. P. No.43/2021.

Page - 8 of 15 applied to the trial Court for sending the cheque in question for opinion of hand-writing expert after the complainant closed her evidence. The trial court refused the prayer of the accused which was upheld by the High Court. The Hon'ble Apex Court set aside the order of the High Court and held as under:

> "12. Section 243 (2) is clear that a Magistrate holding an inquiry under the Cr.P.C. in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a hand-writing expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the hand-writing expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. 'Fair trial' includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and courts should be jealous in seeing that there is no breach of them. We have not been able to appreciate the view of the learned Judge of the High Court that the petitioner has filed application under Section 243 Cr.P.C. without naming any person as witness or anything to be summoned, which are to be sent for handwriting expert for examination. As noticed above, Section 243(2) Cr.P.C. refers to a stage when the prosecution closes its evidence after examining the witnesses and the accused has entered upon his defence. The appellant in this case requests for sending the cheque in question, for the opinion of the hand-writing expert after the respondent has closed her evidence, the Magistrate should have granted such a request unless he

> thinks that the object of the appellant is vexation or delaying the criminal proceedings. In the circumstances, the order of the High Court impugned in this appeal upholding the order of the Magistrate is erroneous and not sustainable."

[17] Mr. Deb, learned senior counsel has also relied on the decision of the Apex Court in the case of T. Nagappa Vrs. Y. R. Muralidhar; reported in Crl. Rev. P. No.43/2021.

Page - 9 of 15 (2008) 5 SCC 633. In this case also accused made a similar prayer to the trial Court for sending the disputed cheque to the forensic science laboratory for determining the age of his signature which was dismissed by the trial Court. The High Court also dismissed the revision application against the order of the trial Court. The Apex Court held that accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognised by parliament in terms of Sub Section (2) of Section 243 of the Code of Criminal Procedure, 1973. The Apex Court reiterated the principles enunciated in the case of Kalyani Baskar (supra) and held as under:

> "9. What should be the nature of evidence is not a matter which should be left only to the discretion of the Court. It is the accused who knows how to prove his defence. It is true that the court being the master of the proceedings must determine as to whether the application filed by the accused in terms of sub-section (2) of Section 243 of the Code is bona fide or not or whether thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc. If permitted to do so, steps therefor, however, must be taken within a limited time. There cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protract the trial or summon witnesses whose evidence would not be at all relevant."

[18] Learned senior counsel representing the petitioner has further contended that the Apex Court in a catena of decisions has held that right of accused to adduce evidence in support of defence is a part of fair trial which cannot be denied to him. Counsel contends that the trial Court arbitrarily denied such right to the accused petitioner which was erroneously upheld by the leaned Sessions Judge by his impugned order. Having relied on the decision of the Apex Court in Natasha Singh Vrs. Central Bureau of Investigation (State); Crl. Rev. P. No.43/2021.

Page - 10 of 15 reported in (2013) 5 SCC 741 counsel has contended that Court enjoys a very wide discretion in summoning a person as a witness at any stage of the trial or the proceedings to arrive at a just decision. Counsel contends that a defence witness should be treated at par with the prosecution witnesses and Court has no power to refuse to issue summons to a defence witness except on the ground provided under Sub Section (2) of Section 243 Cr. P.C. Counsel has referred to the paragraphs No. 8, 9 and 10 of the said judgment of the Apex Court which read as under:

> "8. Section 311 Cr.P.C. empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other

> proceedings" under the Cr.P.C., or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, the Cr.P.C. has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.
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> 9. In Mir Mohd. Omar & Ors. v. State of West Bengal, AIR 1989 SC 1785, this Court examined an issue wherein, after the statement of the accused under Section 313 Cr.P.C. had been recorded, the prosecution had filed an application to further examine a witness and the High Court had allowed the same. This Court then held, that once the accused has been examined under Section 313 Cr.P.C., in the event that liberty is given to the prosecution to recall a witness, the same may amount to filling up a lacuna existing in the case of the prosecution and therefore, that such an order was uncalled for.

10. In Mohanlal Shamji Soni v. Union of India & Anr., AIR 1991 SC 1346, this Court examined the scope of Section 311 Cr.P.C., and held that it is a cardinal rule of the law of evidence, that the best available evidence must be brought before the court to prove a fact, or a point in issue. However, the court is under an obligation to discharge its statutory functions, whether discretionary or obligatory, according to law and hence ensure that justice is done. The court has a duty to determine the Crl. Rev. P. No.43/2021.

Page - 11 of 15 truth, and to render a just decision. The same is also the object of Section 311 Cr.P.C., wherein the court may exercise its discretionary authority at any stage of the enquiry, trial or other proceedings, to summon any person as a witness though not yet summoned as a witness, or to recall or re- examine any person, though not yet summoned as a witness, who are expected to be able to throw light upon the matter in dispute, because if the judgments happen to be rendered on an inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated."

[19] Mr. S. K. Deb, learned senior advocate has argued that by the impugned order, the learned Sessions Judge affirmed an erroneous order passed by the Trial Court denying the legitimate right to the accused to adduce evidence to defend himself against a criminal charge without any valid ground. Counsel therefore, urges the Court to set aside the impugned order. [20] Mr. Samar Das, learned counsel appearing for the complainant on the other hand defended the impugned order by saying that Court is not powerless to refuse to issue summons to defence witnesses, when it appears to the Court that by filing a long list of witnesses unconnected with the case, accused tries to delay the proceedings. Counsel contends that in the present case accused petitioner was given ample opportunity to adduce defence witness. He did not avail those opportunities. Thereafter, he filed a

long list of witnesses without proper address of those witnesses only with the purpose of delaying the proceedings of the case. Counsel has relied on the decision of the Apex Court in the case of Arivazhagan Vrs. State Represented by Inspector of Police; reported in (2000) 3 SCC 328 wherein the Apex Court in an appeal arising out of a proceeding under the Prevention of Corruption Act, 1988 has held as under:

> "16. It is thus noticeable that one of the main objects sought to be achieved through insertion of Section 7-A was speedy trial for cases relating to the problem of corruption. When we read Section 22 of the PC Act which requires a particular procedure to be followed relating to the filing of list of witnesses and documents for the defence, it must be borne in mind that the legislative Crl. Rev. P. No.43/2021.
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> Page - 12 of 15 intent for the aforesaid change in the procedure is mainly for achieving expeditiousness of the trial. It is true that the concept of speedy trial must apply to all trials, but in the trials for offences relating to corruption the pace must be accelerated with greater momentum due to a variety of reasons. Parliament expressed grave concern over the rampant ever-growing corruption among public servants which has been a major cause for the demoralisation of the society. When corrupt public servants are booked they try to take advantage of the delay-proned procedural trammels of our legal system by keeping the penal consequences at bay for a considerable time. It was this reality which impelled the Parliament to chalk out measures to curb procrastinating procedural clues. Section 22 of the P.C. Act is one of the measures evolved to curtail the delay in corruption cases. So the construction of Section 243(1) of the Code as telescoped by Section 22 of the PC Act must be consistent with the aforesaid legislative intent.
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> 17. The purpose of furnishing a list of witnesses and documents to the Court before the accused is called upon to enter on his defence is to afford an occasion to the court to peruse the list. On such perusal, if the court feels that examination of at least some of the persons mentioned in the list is quite unnecessary to prove the defence plea and the time which would be needed for completing the examination of such witnesses would only result in procrastination, it is the duty of the court to short list such witnesses. We may also add that if the court feels that the list is intended only to delay the proceedings, the court is well within its powers to disallow even the whole of it."

[21] From a plain reading of Sub Section (2) of Section 243 Cr.P.C it would emerge that after the accused in a case has entered upon his defence and applies to the Magistrate to issue process for compelling the attendance of any witness for examination or cross-examination or for production of any document or other things, it is obligatory on the part of the Magistrate to issue such process. Under Sub Section (2) Magistrate can refuse to issue such process on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Moreover, such ground should be recorded in writing by the Magistrate. [22] As stated, the Chief Judicial Magistrate, Belonia by his order dated 15.03.2019 refused to issue summons to the defence witnesses on the following

grounds:

Crl. Rev. P. No.43/2021.

Page - 13 of 15

(i) Proper particulars of the witnesses were not furnished by the accused.

(ii) In a complaint case it was the liability of the accused to adduce evidence of defence witnesses on his own accord.

(iii) The accused himself did not appear as a defence witness and he did not apprise the Court as to how the defence witnesses cited by him were related to the case.

[23] It would appear from the order dated 15.03.2019 passed by the learned Chief Judicial Magistrate that despite refusing to issue summons to the defence witnesses, the learned Chief Judicial Magistrate posted the case for examination of defence witnesses. By the subsequent order dated 14.06.2019 the learned Chief Judicial Magistrate refused to extend time to the accused for examination of defence witnesses. In his order dated 14.06.2019 learned Chief Judicial Magistrate repeated that proper particulars of the DWs were not furnished by the accused and moreover in a complaint case parties were required to produce their witnesses on their own. Both of these orders passed by the learned Chief Judicial Magistrate were challenged in Criminal Revision No.6 of 2019 before the learned Sessions Judge who was also of the view that learned Chief Judicial Magistrate rightly rejected the petition of the accused on the grounds that in a complaint case parties are under the obligation to adduce evidence on their own. According to learned Sessions Judge, the accused could not establish that before filing the petition for issuing summons to the witnesses he himself had taken any initiative to produce those witnesses. Moreover, initially he wanted the Court to issue summons to nine witnesses and subsequently, he applied for issuing summons to six witnesses. On these grounds, the learned Sessions Judge upheld Crl. Rev. P. No.43/2021.

Page - 14 of 15 the orders dated 15.03.2019 and 14.06.2019 passed by the Chief Judicial Magistrate.

[24] It is no case of either of the parties that Section 243 Cr. P.C has no application in this case. The Apex Court has also approved the applicability of Section 243 Cr. P.C in a case under Section 138 N.I. Act in the judgment rendered in Kalyani Baskar (supra) as well as in the case of T. Nagappa (supra). Therefore, no question can arise with regard to applicability of Section 243 Cr. P.C in the cases under N. I. Act.

[25] The reasons assigned by the trial Court as well as by the learned Sessions Judge for refusing the prayer of the accused for issuing summons to his witnesses are not acceptable in view of the law laid down by the Apex Court in the cases Kalyani Baskar (supra) and T. Nagappa (supra). The petitioner is an accused under Section 138 N.I Act punishment of which may extend to imprisonment for a term up to two years or with fine which may extend to twice the amount of cheque or with both. Therefore, he should be allowed fair and proper opportunity to prove his innocence. Adducing

evidence in support of his defence is a valuable right of him which cannot be denied to him. If for non submission of the true particulars of the witnesses, the trial Court felt it difficult to issue summons to the defence witnesses, trial Court could have asked the accused to submit proper particulars of the witnesses. One of the reasons assigned by the trial Court is that in a complaint case it is the duty of the accused to produce the defence witnesses on his own and court cannot issue summons to the defence witnesses. By the impugned judgment, the learned Sessions Judge appears to have accepted the reasoning assigned by the trial Court and upheld his order by allowing the criminal revision petition.

Crl. Rev. P. No.43/2021.

Page - 15 of 15 [26] It is true that accused should not be allowed to unnecessarily protract the trial or request the Court to issue summons to the witnesses whose evidence would not at all be relevant for deciding the case. In such situation the trial Court may discard the petition of the accused on the ground of vexation and delay. In the case in hand, no such ground has been assigned by the trial Court for refusing to issue summons to the witnesses of the accused. [27] For the reasons stated above, the impugned order passed by the learned Sessions Judge affirming the order of the trial Court stands set aside. [28] The accused is directed to appear before the trial Court within 3(three) weeks from today and submit a fresh petition for issuing summons to his witnesses along with fresh list of witnesses giving complete postal address of those witnesses.

[29] Thereafter, the trial Court after hearing the parties shall decide the petition in accordance with law following the decisions of the Hon'ble Apex Court in the judgments cited to supra.

[30] In terms of the above, the criminal revision petition is disposed of. Pending application(s), if any, shall also stand disposed of.

Send down the LCR.

JUDGE Dipankar Crl. Rev. P. No.43/2021.