

Neutral Citation No. - 2023:AHC-LKO:81232

Court No. - 11

Case :- APPLICATION U/S 482 No. - 12027 of 2023

Applicant :- Aditya Kumar Bajpai

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Civil Sectt. Lko

Counsel for Applicant :- Arun Sinha, Siddhartha Sinha, Umang Agarwal

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania, J.

Heard Sri Arun Sinha, Advocate assisted by Sri Umang Agarwal, Advocate, Sri Nirmal Pandey, learned counsel for the State as also Sri Ratnesh Chandra, Advocate, who has filed his Vakalatnama on behalf of Susheel Kumar Shukla (complainant), which is taken on record.

By means of the present application under Section 482 Cr.P.C., the applicant has assailed the order dated 09.10.2023, whereby the first appellate court rejected the application preferred by the applicant under Section 391 Cr.P.C. in Criminal Appeal No. 03 of 2023 (Aditya Bajpai vs. State of U.P.), which was filed against the judgment of conviction dated 23.01.2023 passed in Criminal Case No. 266 of 2022, arising out of Crime No. 210 of 2016 under Sections 388, 389 IPC, P.S.-Kotwali, District-Unnao.

The relevant operative portion of the impugned order dated 09.10.2023 reads as under:-

"उभय पक्ष को सुना तथा पत्रावली का अवलोकन किया।

*दाण्डिक बाद संख्या 266/2022 राज्य प्रति आदित्य बाजपेई व अन्य में
अवर न्यायालय न्यायिक दण्डाधिकारी/अपर व्यवहार न्यायाधीश अवर
खण्ड कक्ष संख्या 4 उन्नाव के द्वारा प्रार्थी / अपीलार्थी आदित्य बाजपेई*

को धारा 388 व 389 भा०द०सं० में दोषसिद्ध करते हुए तीन-तीन वर्ष के सश्रम कारावास एवं 5000-5000 रुपये के अर्थदण्ड से दण्डित किया गया है। उपरोक्त आदेश से विक्षुब्ध होकर यह अपील अपीलार्थी के द्वारा प्रस्तुत की गयी है जिसमें सफाई साक्ष्य के रूप में बैंक में तैनात प्रबन्धक अंकित कपूर व अन्य साक्षियों को तलब करने की प्रार्थना की गयी है।

धारा 391 द०प्र०सं० के अनुसार-

- (1) इस अध्याय के अधीन किसी अपील पर विचार करने में यदि अपीलीय न्यायालय अतिरिक्त साक्ष्य आवश्यक समझता है तो वह अपने कारणों को अभिलिखित करेगा और ऐसा साक्ष्य या तो स्वयं ले सकता है या मजिस्ट्रेट द्वारा या जब अपील न्यायालय उच्च न्यायालय है, तब सेशन न्यायालय या मजिस्ट्रेट द्वारा, लिये जाने का निदेश दे सकता है।
- (2) जब अतिरिक्त साक्ष्य सेशन न्यायालय या मजिस्ट्रेट द्वारा ले लिया जाता है तब वह ऐसा साक्ष्य प्रमाणित करके न्यायालय को भेजेगा और तब ऐसा न्यायालय अपील निपटाने के लिए अग्रसर होगा।
- (3) अभियुक्त या उसके प्लीडर को उस समय उपस्थित होने का अधिकार होगा जब अतिरिक्त साक्ष्य लिया जाता है।
- (4) इस धारा के अधीन साक्ष्य का लिया जाना अध्याय 23 के उपबंधों के अधीन होगा मानो वह कोई जांच है।

अपीलार्थी/अभियुक्त को अवर न्यायालय के समक्ष वाद में विचारण के दौरान साक्ष्य में अपना समस्त साक्ष्य प्रस्तुत करने का पूर्ण अवसर प्राप्त था। अभियुक्त उपरोक्त शाखा प्रबन्धक श्री अंकित कपूर को भी अवर न्यायालय के समक्ष प्रस्तुत कर सकता था। अपीलार्थी द्वारा अन्य साक्षियों को भी तलब करने की प्रार्थना की गयी है परन्तु किसी के नाम अंकित नहीं किये गये हैं। धारा 391 द०प्र०सं० के स्तर पर साक्षी तलब करने में अत्यन्त सावधानी रखने की आवश्यकता है जैसा कि माननीय उच्चतम न्यायालय द्वारा *Ashok Tshering Bhutia vs. State of Sikkim, 2011 CrLJ 1770 (SC)* में यह अवधारित किया गया है—*Additional evidence at appellate stage (Sec. 391 CrPC): Filling up gap or lacuna in evidence can not be allowed u/s 391 CrPC—The provision u/s 391 CrPC for production of additional evidence at appellate stage has been made for just and fair play and not to fill up gap or lacuna. Sec. 391 CrPC forms an exception to the general rule that an appeal must be decided on the evidence which was before the trial court and the powers being an exception shall always have to be exercised with caution and circumspection so as to meet ends of justice.* उपरोक्त दिशा निर्देश माननीय उच्चतम न्यायालय द्वारा निर्णय *Anil Sharma vs. State of Jharkhand, (2004) 5 SCC 679*, *Rambhan vs. State of Maharashtra, 2001 (2) JIC 444*, *Kulbul vs. State of U.P., (2001) JIC 262 (All) 5* and *Bir Singh vs. State of U.P. (1977) 4 SCC 420 8 (B)* में भी दिये गये हैं।

अभियुक्त/अपीलार्थी द्वारा घटनास्थल पर अपनी उपस्थिति न होने का साक्ष्य पूर्व में ही दिया जा चुका था। अभियुक्त/अपीलार्थी पुनः इसी संबंध में साक्ष्य प्रस्तुत करना चाहता है जिसका अवसर पुनः दिये जाने का

औचित्य नहीं है। अभियुक्त को अपने सफाई साक्ष्य में प्रस्तुत की गयी कमियों को अपील के स्तर पर पूरा करने का अवसर दिया जाना न्यायोचित नहीं है।

उपरोक्त समस्त तथ्य, परिस्थितियों एवं माननीय उच्चतम न्यायालय के उपरोक्त निर्णयों को दृष्टिगत रखते हुए अभियुक्त/अपीलार्थी की ओर से प्रस्तुत प्रार्थना पत्र निरस्त होने योग्य है।

प्रार्थी/अपीलार्थी द्वारा प्रस्तुत प्रार्थना पत्र अन्तर्गत धारा 391 द०प्र०सं० तदनुसार निरस्त किया जाता है।

दिनांक 20.10.2023 को बहस हेतु पेश हो।"

Assailing the order impugned dated 09.10.2023, learned counsel for the applicant-Sri Arun Sinha, Advocate assisted by Sri Umang Agarwal, Advocate, submitted that in the FIR (the basis of entire prosecution case), the alleged incident had taken place on 01.04.2016 at 05:00 A.M., Awas Vikas Colony, District-Unnao, whereas, at relevant point of time, the applicant was posted at Branch-Farah, District-Mathura and to prove the fact that the applicant was not present at the place of crime and in fact was present at District-Mathura, the applicant filed 47 documents, which were photocopies, before the trial court and thereafter, on 22.11.2022, the applicant filed 35 certified copies of documents i.e. certificates issued by Bank (employer) and the 47 documents so filed were rejected being not admissible in evidence and 35 documents filed by the applicant could not be proved before the trial court and based upon the evidence of prosecution, trial court passed the judgment of conviction dated 23.01.2023.

Being aggrieved by the order dated 23.01.2023, Criminal Appeal No. 03 of 2023 was preferred by the applicant, wherein, after taking back the said 35 documents from the trial court the applicant preferred an application under Section 391 Cr.P.C., which empowers the appellate court to take additional

evidence, and the appellate court by means of impugned order dated 09.10.2023 rejected the said application.

He submitted that impugned order dated 09.10.2023 is not in consonance with the principle settled by the Hon'ble Apex Court including the judgment relied upon by the trial court i.e. judgment of Hon'ble Apex Court passed in the case of **Ashok Tshering Bhutia vs. State of Sikkim; (2011) 4 SCC 402.** Relevant paras, referred, are as under:-

"6. During the course of trial, the prosecution examined 26 witnesses and the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter called "CrPC") on 29-11-2001. Subsequent thereto, in support of his case, the appellant also examined 4 witnesses. The Special Judge held the appellant guilty of the aforesaid charges vide judgment and order dated 30-5-2002 and awarded the punishment mentioned hereinabove.

7. Being aggrieved, the appellant approached the High Court by filing Criminal Appeal No. 4 of 2002. During the hearing of the appeal, an argument was advanced before the High Court that a large number of documents, particularly Exts. P-16, P-17, P-23, P-33, P-34, P-35(I), P-35(II), P-35(III), P-62 and P-63, though relied on by the Special Judge during the trial, had not been proved in evidence. Therefore, the judgment of the Special Court suffered from fundamental procedural errors and stood vitiated.

8. The High Court instead of deciding the appeal taking into account the aforesaid argument, remitted the matter to the trial court vide order dated 27-9-2002, giving an opportunity to the prosecution to prove those documents and it directed the trial court to send the file back to the High Court after completing that formality.

29. The primary object of the provisions of Section 391 CrPC is the prevention of a guilty man's escape through some careless or ignorant action on part of the prosecution before the court or for vindication of an innocent person wrongfully accused, where the court omitted to record the circumstances essential to

elucidation of truth. Generally, it should be invoked when formal proof for the prosecution is necessary. [Vide Rajeswar Prasad Misra v. State of W.B. [AIR 1965 SC 1887 : (1965) 2 Cri LJ 817] , Ratilal Bhanji Mithani v. State of Maharashtra [(1971) 1 SCC 523 : 1971 SCC (Cri) 231 : AIR 1971 SC 1630] , Rambhau v. State of Maharashtra [(2001) 4 SCC 759 : 2001 SCC (Cri) 812 : AIR 2001 SC 2120] , Anil Sharma v. State of Jharkhand [(2004) 5 SCC 679 : 2004 SCC (Cri) 1706 : AIR 2004 SC 2294] , Zahira Habibulla H. Sheikh v. State of Gujarat [(2004) 4 SCC 158 : 2004 SCC (Cri) 999] and Manu Sharma v. State (NCT of Delhi) [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385 : AIR 2010 SC 2352] .]

30. This Court in State of Gujarat v. Mohanlal Jitmalji Porwal [(1987) 2 SCC 364 : 1987 SCC (Cri) 364 : AIR 1987 SC 1321] dealing with the issue held as under : (SCC pp. 370-71, para 5)

“5. ... To deny the opportunity to remove the formal defect was to abort a case against an alleged economic offender. Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of the moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.”

31. In Rambhau [(2001) 4 SCC 759 : 2001 SCC (Cri) 812 : AIR 2001 SC 2120] , a larger Bench of this Court held as under : (SCC p. 762, para 4)

“4. Incidentally, Section 391 forms an exception to the general rule that an appeal must be decided on the evidence which was before the trial court and the

powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice. Be it noted further that the doctrine of finality of judicial proceedings does not stand annulled or affected in any way by reason of exercise of power under Section 391 since the same avoids a de novo trial. It is not to fill up the lacuna but to subserve the ends of justice. Needless to record that on an analysis of the Civil Procedure Code, Section 391 is thus akin to Order 41 Rule 27 of the Civil Procedure Code.”

(emphasis added)

32. In view of the above, the law on the point can be summarised to the effect that additional evidence can be taken at the appellate stage in exceptional circumstances, to remove an irregularity, where the circumstances so warrant in public interest. Generally, such power is exercised to have formal proof of the documents, etc. just to meet the ends of justice. However, the provisions of Section 391 CrPC cannot be pressed into service in order to fill up lacunae in the prosecution case."

Sri Sinha also referred para 5 of the judgment passed in the case of **State of Gujarat vs. Mohanlal Jitamalji Porwal And Another; (1987) 2 SCC 364**, which reads as under:-

"5. The next question which arises is as regards the request made by the learned Assistant Public Prosecutor for adducing additional evidence in order to prove letter Ex. 26 received from the Mint Master certifying that the article in question was made of gold of the purity of 99.60. The request was made in order to invoke the powers of the court under Section 391 of the Code of Criminal Procedure, 1973, which inter alia provides that in dealing with any appeal under Chapter 29 the appeal court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself or ask it to be taken by a Magistrate. The High Court rejected the prayer on the ground that it did not consider it "expedient in the interests of justice to open a new vista of evidence" in view of the fact that the offence had taken place six years back. The mere fact that six years had elapsed, for which time-lag the prosecution was in no way responsible, was no good ground for refusing to act in order to promote the interests of justice in an age when delays in the court

have become a part of life and the order of the day. Apart from the fact that the alleged lacuna was a technical lacuna in the sense that while the opinion of the Mint Master had admittedly been placed on record it had not been formally proved the report completely supported the case of the prosecution that the gold was of the specified purity To deny the opportunity to remove the formal defect was to abort a case against an alleged economic offender. Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona-non-grata whose cause may be treated with disdain. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest. The High Court was therefore altogether unjustified in rejecting the application made by the learned Assistant Public Prosecutor invoking the powers of the Court under Section 391 of the Code of Criminal Procedure. We are of the opinion that the application should have been granted in the facts and circumstances of the case with the end in view to do full and true justice. The application made by the learned Assistant Public Prosecutor is therefore granted. The High Court will issue appropriate directions for the recording of the evidence to prove the report of the Mint Master under Section 391 CrPC when the matter goes back to the High Court and is listed for directions. The appeal is therefore allowed. The order of acquittal is set aside. The matter is remitted to the High Court for proceeding further in accordance with law in the light of the above said directions."

Learned counsel for the applicant also placed reliance on the judgment passed by the Hon'ble Apex Court in the case of **Brigadier Sukhjeet Singh (Retired) MVC vs. State of U.P. And Others; (2019) 16 SCC 712**. Relevant paras of the same are as under:-

"22. Chapter XXIX of the Code of Criminal Procedure, 1973 deals with "Appeals". Section 391 CrPC empowers the appellate court to take further evidence or direct it to be taken. Section 391 is as follows:

"391. Appellate court may take further evidence or direct it to be taken.—(1) In dealing with any appeal under this Chapter, the appellate court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the appellate court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the appellate court, and such court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

23. The key words in Section 391(1) are "if it thinks additional evidence to be necessary". The word "necessary" used in Section 391(1) is to mean necessary for deciding the appeal. The appeal has been filed by the accused, who have been convicted. The powers of the appellate court are contained in Section 386. In an appeal from a conviction, an appellate court can exercise power under Section 386(b), which is to the following effect:"386. (b) in an appeal from a conviction—

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a court of competent jurisdiction subordinate to such appellate court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;”

*24. Power to take additional evidence under Section 391 is, thus, with an object to appropriately decide the appeal by the appellate court to secure ends of justice. The scope and ambit of Section 391 CrPC has come up for consideration before this Court in *Rajeswar Prasad Misra v. State of W.B.* [*Rajeswar Prasad Misra v. State of W.B.*, AIR 1965 SC 1887 : (1965) 2 Cri LJ 817] Hidayatullah, J., speaking for the Bench held that a wide discretion is conferred on the appellate courts and the additional evidence may be necessary for a variety of reasons. He held that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it. Following was laid down in paras 8 and 9 : (AIR p. 1892)*

“8. ... Since a wide discretion is conferred on appellate courts, the limits of that courts' jurisdiction must obviously be dictated by the exigency of the situation and fair play and good sense appear to be the only safe guides. There is, no doubt, some analogy between the power to order a retrial and the power to take additional evidence. The former is an extreme step appropriately taken if additional evidence will not suffice. Both actions subsume failure of justice as a condition precedent. There the resemblance ends and it is hardly proper to construe one section with the aid of observations made by this Court in the interpretation of the other section.

9. Additional evidence may be necessary for a variety of reasons which it is hardly necessary (even if was possible) to list here. We do not propose to do what the legislature has refrained from doing, namely, to control discretion of the appellate court to certain stated circumstances. It may, however, be said that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it. The power must be exercised sparingly and only in suitable cases. Once such action is justified, there is no restriction on the kind of evidence which may be received. It may be formal or substantial. It must, of course, not be received in such a way as to cause prejudice to the accused as for example it should not be received as a disguise for a retrial or to change the nature of the case against him. The order must not

ordinarily be made if the prosecution has had a fair opportunity and has not availed of it unless the requirements of justice dictate otherwise.”

25. This Court again in *Rambhau v. State of Maharashtra* [*Rambhau v. State of Maharashtra*, (2001) 4 SCC 759 : 2001 SCC (Cri) 812] had noted the power under Section 391 CrPC of the appellate court. Following was stated in paras 1 and 2 : (SCC p. 761)

“1. There is available a very wide discretion in the matter of obtaining additional evidence in terms of Section 391 of the Code of Criminal Procedure. A plain look at the statutory provisions (Section 391) would reveal the same...

*2. A word of caution however, ought to be introduced for guidance, to wit : that this additional evidence cannot and ought not to be received in such a way so as to cause any prejudice to the accused. It is not a disguise for a retrial or to change the nature of the case against the accused. This Court in *Rajeswar Prasad Misra v. State of W.B.* [*Rajeswar Prasad Misra v. State of W.B.*, AIR 1965 SC 1887 : (1965) 2 Cri LJ 817] in no uncertain terms observed that the order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it. This Court was candid enough to record however, that it is the concept of justice which ought to prevail and in the event, the same dictates exercise of power as conferred by the Code, there ought not to be any hesitation in that regard.”*

26. From the law laid down by this Court as noted above, it is clear that there are no fetters on the power under Section 391 CrPC 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.

27. Now, we revert to the facts of the present case to examine as to whether present was the case for exercise of the power by the appellate court under Section 391 CrPC to permit adducing the additional evidence at the appellate stage. The facts as noted above indicate that the Trust is admittedly the owner of agricultural land in Village Bichaie. The complainant has been in possession of large number of agricultural lands as thekedar of the Trust since 1975, according to his own case, which he even mentioned in the first information report. The application under Section 391 CrPC was made in the appellate court to

accept certified copy of the Trust Deed dated 18-10-1989 and Resolution No. 112 dated 18-10-1989 and permitting the appellant to prove the said document by leading oral evidence. The reference of Trust Deed has been made by the trial court in its judgment dated 7-10-2013. The trial court in its judgment had observed “the copy of the Trust Deed dated 18-10-1989 is available on record being Paper No. 30Kha/46”. The trial court further has observed that “it is pertinent to mention here that the accused had not proved the Trust Deed dated 18-10-1989 by way of evidence”.

28. What was available on the record was the photocopy of the Trust Deed. Due to non-proving of the Trust Deed, the trial court has not adverted to the Trust Deed and the Resolution, which were relevant to understand and know the conduct of the appellant and other trustees for entering in the MoUs for sale of agricultural land. The facts as noted above indicate that prosecution started recording its evidence on 17-11-2000, which was completed on 21-11-2012. A period of twelve years was taken by the prosecution to lead its evidence and after 21-11-2012, the judgment was delivered on 7-10-2013. The appellant was convicted for offences under Sections 420/34 IPC accepting the charge that complainant was cheated with regard to sale of agricultural land of the Trust. The High Court while rejecting the application filed under Section 482 CrPC of the appellant has made following observations : (Sukhjit Singh case [Sukhjit Singh v. State of U.P., 2017 SCC OnLine All 2863] , SCC OnLine All para 11)

“11. ... The present exercise initiated by the applicant for filing additional evidence at such a belated stage appears to be with some ulterior mala fide motive or delaying the decision of the appeal to eternity.”

29. [Ed. : Para 29 corrected vide Official Corrigendum No. F.3/Ed.B.J./27/2019 dated 6-4-2019.] Both the above reasons given by the High Court and relied by the High Court in rejecting the application filed under Section 482 are unfounded. The first observation of the High Court is that filing of additional evidence at such a belated stage. In the facts of the present case we do not approve the above observation. When the appellate court has been given power to lead additional evidence, the observation that it is belated stage was uncalled for. The appellant was convicted on 7-10-2013 and appeal was immediately filed on the

next date i.e. 8-10-2013. It was not even mentioned by the High Court that there is anything on record to indicate that appeal was being heard and at this stage the application under Section 391 CrPC was filed, calling the application as filed at belated stage itself was unjustified. Further, the observation of the High Court that application was filed with some ulterior mala fide motive also does not commend us. The appellant had already been convicted by the trial court, the charge was cheating the complainant with regard to sale of agricultural land of the Trust. The second Trust Deed dated 18-10-1989, which was on record and referred to by the trial court and was refused to look into on the ground that it was not proved by the appellant. Filing of the application before the High Court to accept the certified copy of the Trust Deed and the Resolution and to permit the appellant to lead evidence can in no manner be said to be mala fide motive of the accused, who had been convicted. In the appeal, he has the right to take all the grounds and also lead additional evidence, which in accordance with the appellate court is necessary in deciding the appeal. As noted above, this Court has laid down that when it becomes necessary to take additional evidence, cannot be enlisted or enumerated in any fixed formula. It depends on facts of each and every case to come to a conclusion as to whether it is necessary to take additional evidence or not. Present is a case where it was due to lapse on the part of the appellant and his counsel that the second Trust Deed, which was basis for taking steps for sale of the land could not be proved.

30. The second observation of the High Court is that the application to take additional evidence at the appellate stage is filed by appellant for delaying the decision of the appeal to eternity, we fail to see that when prosecution took twelve years' time in leading evidence before the trial court and the judgment by trial court was delivered on 7-10-2013, the appeal was filed on 8-10-2013, how can appellant be castigated with the allegation that he intended to delay the appeal to eternity. The observation was unduly misplaced and incorrect. When statute grants right to appeal to an accused, he has right to take all steps and take benefit of all powers of the appellate court in the ends of the justice. In a criminal case appellate court has to consider as to whether conviction of the accused is sustainable or the appellant has made out a case for acquittal. The endeavour of all courts has to be to reach to truth and justice. The case of the

complainant also has been that it is only after execution of the Trust Deed that talks regarding sale of the agricultural land was initiated. Trust Deed and the Resolution, which are foundation and basis for the start of the process of the sale of the land were documents, which ought to have been permitted to be proved to arrive at any conclusion to find out the criminal intent, if any, on the part of the appellant."

Sri Sinha, based upon the aforesaid pronouncements of Hon'ble Apex Court, further submitted that to unearth the truth and to advance substantial justice between the parties, the appellate court is under obligation to exercise the power under Section 391 Cr.P.C. In this case, the appellate court, after observing that the appellant cannot be permitted to remove the shortcomings occurred while adducing defense evidence at the stage of appeal, has rejected the application under Section 391 Cr.P.C. of the applicant (an accused).

He submitted that the additional evidence/documents i.e. certified copies of certificate issued by the Bank (employer) and presence of witness to prove the same is relevant for the purposes of establishing the fact that the applicant was not present at the place of crime i.e. Awas Vikas Colony, District-Unnao at 05:00 AM on 01.04.2016 and to secure the ends of justice. In these circumstances, interference of this Court is required in the matter.

Sri Ratnesh Chandra, Advocate as also learned AGA appearing for the State of U.P. vehemently opposed the instant application, however, they could not dispute the law as settled by the Hon'ble Apex Court in the judgments, referred above.

Considering the submissions advanced by the learned counsel for the parties and perused the record.

The law on the subject is settled. As per the judgments, referred above, the appellate authority is empowered to take additional evidence by exercising its power under Section 391 Cr.P.C., which should always be exercised to unearth the truth and to secure the ends of justice or to advance substantial justice between the parties.

Having considered the aforesaid including the fact that the 35 certified documents (certificates issued by the Bank to the applicant) were filed before the trial court and the same could not be proved and after the judgment of conviction dated 23.01.2023 the same were taken back by preferring an application and thereafter, the application under Section 391 Cr.P.C. was preferred, which has been rejected by the appellate court vide impugned order dated 09.10.2023 and also the observations made by the Hon'ble Apex Court in the judgments, referred above, regarding taking additional evidence as also the observation made in para 26 to 30 of the judgment passed in the case of **Brigadier Sukhjeet Singh (Retired) MVC (Supra)**, this Court finds that the appellate court erred in rejecting the application preferred by the applicant under Section 391 Cr.P.C. and being so is of the view that interference is required in the impugned order dated 09.10.2023. Accordingly, the order dated 09.10.2023 is hereby set-aside. The appellate court is directed to permit the applicant to lead evidence. The appellate court shall receive additional evidence and complete the exercise within a period of two months from the date of

production of certified copy of this order before it. The Criminal Appeal, thereafter, shall be decided expeditiously.

The instant application under Section 482 Cr.P.C. is hereby **allowed** in above terms.

Order Date :- 11.12.2023

Vinay/-