

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 669 of 2015

- Ashish Pathak S/o Shri Suryadev Pathak Aged About 25 years R/o Ward No. 14, Bada Sardar Ka Bada, Manendragarh, District Koriya Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through District Magistrate, District Koriya Chhattisgarh.
2. Ram Ayodhya Mishra S/o Late Kapil Dev Mishra Aged About 63 Years Proprietor - Aditya Enterprises, Manendragarh, District Koriya Chhattisgarh.

---- Respondents

For Petitioner : Shri Adil Minhaj, Advocate
For Respondent/State : Shri Arvind Shukla, P.L.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board By

04/08/2015

1. Heard.
2. This is a petition under Section 482 of the CrPC, whereby the challenge is to the order dated 25/07/2015 by which the application preferred by the petitioner under Section 391 of CrPC to adduce evidence was dismissed.
3. Learned counsel submits that the appeal arised out of an order of conviction passed by the Magistrate on 30/07/2014 under Section 138 of Negotiable Instrument Act. It is contended that while such appeal was pending before Court of Sessions an application under Section 391 of CrPC was filed before the appellate Court to examine the

Branch Manager, Punjab National Bank, Manendragarh since the subject cheque was of Punjab National Bank. It is contended in order to place the actual facts such evidence of Branch Manager would be necessary. It is further contended that the in such application another copy of report made to Manendragarh police station on 09/03/2013 was sought to be proved. Learned counsel further submits that as per Section 391 of CrPC, if the appellate Court thinks fit, it may record the additional evidence but in this case the application under Section 391 of CrPC was neither dismissed nor allowed and it was observed that the same would be decided at the time of final hearing of the appeal. Therefore, it is contended that the appellant shall loose his valuable rights to challenge the same in the eventuality the application is dismissed. The right to lead evidence would stand closed in the form of the final order.

4. I have heard learned counsel and perused the record under Section 391 of CrPC which is reads as under :-

“390. 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 Sessions or the Magistrate, it or he shall clarify 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.”

5. Reading of the order dated 25/07/2015 purports that the application having been moved, the appellate Court observed that the said application under Section 391 of CrPC shall be decided at the time of final hearing of the appeal. In the context of such observation that if the application under Section 391 of CrPC is decided at the time of hearing of the appeal, then in such eventuality if the application is dismissed, further right to challenge the legality of the said order whether allowing the application or dismissing the application under Section 391 of CrPC would reach to its finality in the form of the final order. So on due consideration, I am of view that no prejudice would be caused to the parties if a direction is given to the Court below to decide the application under Section 391 of CrPC on it's own merits without being influenced by any observation of this Court. Consequently it is directed that the learned 2nd Additional Sessions Judge, Manendragarh shall decide the application under Section 391 of CrPC of the application on it's own merits before hearing the appeal on its merits. It is made clear that this Court has not observed any finding on merits for adjudication of that case.

6. With such observation the petition stands allowed to the above extent.

Sd/-

(Goutam Bhaduri)

Judge