

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 743 of 2015

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

---- Petitioner

Versus

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

---- Respondents

For Petitioner – Shri Adil Minhaj, Advocate.
For Respondent No.1/State – Smt. M. Asha, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

25/08/2015

1. Challenge in this petition is to the order dated 18/08/2015 passed by the 2nd Additional Sessions Judge, Manendragarh, District Korla in Criminal Appeal No. 42/2014 whereby an application preferred by the petitioner under Section 391 of the Cr.P.C. was dismissed.
2. The brief facts of the case are that a complaint under section 138 of the Negotiable Instruments Act was instituted on behalf of respondent No.2 Ram Ayodhya Mishra and vide judgment dated 30/07/2014 in Criminal Case No.37/2014 trial court has sentenced the petitioner with RI for one year and fine of Rs.10,000/-. The said judgment was subject of appeal in appeal bearing number Cr. A. No.42/2014 pending before Second Additional Sessions Judge, Manendragarh.
3. While the appeal was pending before the Second Additional Sessions Judge, an application under section 391 of Cr.P.C. was moved

by the appellant for taking additional evidence of the 'Branch Manager' of Punjab National Bank, Manendragarh and other witness as they could not be examined earlier and their evidence is necessary. Said application was replied by the respondent and it was contended that application was moved only to protract/delay the trial.

4. While application was moved, learned appellate court by its order dated 25/07/2015 observed that said application preferred under section 391 of the Cr.P.C. would be decided at the time of hearing the appeal on merits. Said order was subject of challenge before this court in Cr.M.P. No.669/2015 on the ground that in case order is passed at the final stage, and if the application is dismissed, then it would lead to denial of right to further challenge the same. Therefore, this court by order dated 4/08/2015 directed the trial court to decide the application moved under section 391 of Cr.P.C. to adjudicate the same on merits before appeal is finally heard. In pursuant to such order, learned appellate court of Second Additional Sessions Judge after hearing the application passed the order dated 18/08/2015 which is subject of challenge in this instant petition.

5. Learned counsel for the petitioner would submit that the trial court failed to take into account necessity of the evidence as it would be last opportunity to the appellant to prove his innocence since the subject cheque which was of Punjab National Bank, Branch Manager of the said branch was necessary witness to prove defence. It is further contended that since transaction leads to commercial one, such evidence of Branch Manager would be necessary. He would submit that cheque was given as a security could have been only established by such evidence. He would submit in such background an application moved under section 391 of Cr.P.C. should have been allowed and rejection of the same has caused

great prejudice and illegality to the petitioner.

6. I have gone through the order dated 18/08/2015. Perusal of the order sheet would show that on 6/01/2014 complainant/respondent-2 has closed his evidence. Subsequently, case was fixed for 7/02/2014 for statement of the accused. On such date, since petitioner/accused stated that he wanted to adduce evidence in defence, therefore case was fixed for defence evidence initially on 24/02/2014. Subsequently, the evidence could not be procured and the case was fixed for defence witness on 10/03/2014, 19/03/2014, 25/03/2014, 26/03/2014, 28/03/2014 and in the meanwhile the accused/appellant examined himself. Subsequently, again the case was fixed for defence evidence as same interlocutory order was under challenge in revision before the appellate court. Ultimately on 24/05/2014 and 28/05/2014 the case was fixed for defence evidence and certain application having been preferred case was pending. On 29/05/2014 interlocutory application were decided and lastly the appellant was examined on 7/06/2014.

7. Perusal of the order as also document attached with this petition would show that one witness namely Shishram who was Accountant of Punjab National Bank, Manendragarh, District Koria was examined as defence witness No.2 on behalf of the petitioner. Statement are also on record wherein it is stated that subject cheque was handled by him and since necessary amount was not there in account of of Aditya Sales, it was returned back. He further stated that on the said cheque no seal was placed for the reason that in Ex.P-4 cheque number 520029 was written and thereafter a certificate Ex.P-2 was issued by the Punjab National Bank, Branch Manendragarh which bears signature of Manager. Contention of learned counsel for the petitioner that Branch Manager is the

only witness who can bring out the true and correct fact before the court appears to be misconceived. Court cannot fore go the fact that bank is a body corporate and on behalf of the bank witness the accountant was already examined. It is not personal transaction of the petitioner with the Branch Manager and branch being a body corporate has adduced evidence in the complaint case on behalf of the petitioner. Consequently, reading the order it appears that entire efforts are being made to protract the appeal on some reason. The evidence of the complainant before trial court was closed on 6/01/2014 after many dates and again the effort are made to re-open the case for evidence.

8. Hon'ble Supreme Court has laid down the guidelines to exercise power under section 482 of Cr.P.C. and it is observed that power should be exercised sparingly, with circumspection and not on the mere asking, depending upon facts and circumstances of each case- Mini trial or roving inquiry not contemplated. Said proposition was laid down in case law reported in **(2015) 1 SCC 103** in between **Gunmala Sales Private Limited and others Vs. Navkar Promoters Private Limited and others**.

9. Further more reading of the order would show that no illegality was committed by the court below while dismissing the application of the petitioner under Section 391 of Cr.P.C. Considering the back ground of the case and the evidence which is placed on record.

10. In a result, I am not inclined to invoke extra ordinary power of this court vested in it under Section 482 of Cr.P.C. Accordingly, petition has no merit and it is dismissed.

Sd/-
(Goutam Bhaduri)
JUDGE