

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-27549 of 2015

DATE OF DECISION: 19.8.2015

Onkar Singh and another

.....Petitioners

Versus

State of Punjab

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment?**
2. **To be referred to reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

Present:- Mr. JBS Gill, Advocate
for the petitioners.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 482 Cr.P.C. for setting aside impugned order dated 19.3.2015 passed by learned Additional Sessions Judge (Adhoc) FTC, Hoshiarpur, whereby, the application filed by the petitioners under Section 391 Cr.P.C. for placing on record certified copy of the judgment/decreed of divorce granted by Additional District Judge, Jalandhar on 8.9.1999 as an additional evidence has been dismissed.

Briefly, the facts of the case are that the petitioners and Smt. Mohinder Kaur faced trial before S.D.J.M., Dasuya and were convicted and sentenced for offence punishable under Sections 354,325,323 and 342 IPC vide judgment dated 14.12.2000. Against the aforesaid judgment of trial Court, the petitioners and Smt. Mohinder Kaur filed Criminal appeal,

which was admitted and is pending decision in the Court of Additional Sessions Judge, Hoshiarpur. During pendency of the appeal, Smt. Mohinder Kaur died. An application was moved by the petitioners under Section 391 Cr.P.C. before the lower appellate Court for placing on record the certified copy of exparte judgment of divorce passed by Additional Sessions Judge, Jalandhar dated 8.9.1999 on the ground that it was essential for the just decision of the appeal and was having direct bearing on merits. The said application was dismissed vide order dated 19.3.2015, which is subject matter of challenge in the present petition.

Learned counsel for the petitioners contends that the impugned order has been passed without taking into consideration the grounds mentioned in the application moved by the petitioners. Learned counsel further contends that on coming to know with regard to exparte decree of divorce, the petitioners immediately moved an application for placing it on record. Learned counsel also submits that the judgment to be placed on record is necessary for the just decision of the appeal and no prejudice is going to be caused to either side.

Heard the arguments advanced by learned counsel for the petitioners and have also gone through the impugned order as well as other documents available on the file.

The impugned order has been challenged only on the ground that said judgment is necessary for just decision of the case and no prejudice is going to be caused to either of the party. In the impugned order passed by learned Additional Sessions Judge, Hoshiarpur, it has been mentioned that the judgment to be placed on record is not relevant for the decision of the appeal as the trial remained pending for a considerable long time and the witnesses were examined/cross-examined by the prosecution and place of incident was never in dispute. Even in the inquiry

conducted by the Superintendent of Police, it was proved that the complainant was residing at the village Ghorewaha along with her mother-in-law and sister-in-law. The judgment of ex parte decree of divorce was in existence at the time of lodging of the FIR as it was registered on 31.5.2013 and the trial commenced thereafter and remained pending till 2010. The complainant was not cross-examined on the point that she was not residing in the house i.e. the place of incident. It was also mentioned in the impugned order that now the appellants want to show that complainant-Lakhwinder Kaur was not residing at the place of incident of the present FIR.

On perusal of findings recorded by learned Additional Sessions Judge, Hoshiarpur and after hearing arguments advanced by learned counsel for the petitioners, no case is made out to place on record the ex parte judgment of decree of divorce.

Undisputedly the powers under Section 391 Cr.P.C. can be exercised when there is a failure of justice but such power is to be exercised subject to certain conditions:

- (i) It should be exercised sparingly and only in suitable cases and more particularly where it is justified;
- (ii) Such exercise should not be done in such a way as to cause prejudice to the accused, which would appear as a disguise for a re-trial to change the nature of case against him;
- (iii) The order may not ordinarily be made if the prosecution or any party had a fair opportunity and has not availed of it unless the requirement of justice declare otherwise.

Meaning thereby the leading of additional evidence can be allowed only where it is necessary for the just decision of the case but at the same time this power is to be exercised just to meet out the ends of

justice.

In the present case, the petitioners have failed to indicate the relevancy of the document to be placed on record, whereas, it was already within their knowledge and ample opportunities were granted during pendency of the trial which remained pending till 2010. The powers under Section 391 of the Code is intended to serve the ends of justice by arriving at the truth and there is no question of filling of any lacunae. In the case in hand, this provision although is discretionary but the reasons are necessary to be recorded as to how that is necessary for just decision of the case. It has been held in various judgments of this Court as well of Hon'ble the Apex Court that necessity for additional evidence has to be determined in the context of the need for just decision but it cannot be used for filling up a lacunae. Reference is made to the decision of Hon'ble the Apex Court in the cases of **Jamatraj Kewalji Govani Vs. The State of Maharashtra** 1967 (3) SCR 415 and **Mohanlal Shamji Soni Vs. Union of India and another** 1991 Supp. (1) SCC 271.

In view of the facts and law decision as discussed above, there is no merit in the contentions raised by learned counsel for the petitioner and the present petition being devoid of any merit is hereby dismissed.

August 19, 2015
pooja

(DAYA CHAUDHARY)
JUDGE