

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No.M- 3208 of 2015(O&M)

Date of Decision: February 4, 2015.

Raj Kumar and another

..... PETITIONER (s)

Versus

State of Punjab

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Pritam Saini, Advocate
for the petitioners.

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

LISA GILL, J.

Petitioners pray for quashing of order dated 24.12.2014 passed by the learned Sessions Judge, Moga whereby their application dated 22.08.2014 (Annexure P3) for leading additional evidence was dismissed.

Petitioners have been convicted by the learned trial court for the offences punishable under Sections 326/324/323/452/34 IPC and sentenced to undergo rigorous imprisonment for varying terms, maximum being three years vide judgment and order dated 09.10.2013 (Annexure P2). Petitioners preferred appeal against the said judgment and order passed by the learned trial court.

During the pendency of the appeal, they moved an application dated 22.08.2014

(Annexure P3) seeking permission to produce additional evidence in the shape of a cancellation report and a report submitted by the Deputy Superintendent of Police Surjit Singh of Moga at the appellate stage. The said application reads as under:-

“Criminal appeal in case FIR No.54, dated 1.6.2006, PS Badhni Kalan, U/s 452/326/324/323/34 IPC.

Application on behalf of the appellants/accused for allowing them to produce defence evidence.

Respectfully Showeth:

1. That the above said appeal of the appellants/accused is pending in this Hon'ble court and the same is fixed for today.
2. That in the above noted case, the investigation was conducted by SI Jasvir Singh and then the inquiry was conducted by DSP Surjit Singh of Moga and both of them found allegations in the FIR to be false and recommended for cancellation of FIR and cancellation report was prepared by Shri Tarlok Singh SHO, PS Badhni Kalan on dated 24.12.2006.
3. That the appellants/accused want to tender/produce the cancellation report and inquiry report by DSP Surjit Singh in the defence evidence which is permission as per law of land in RCR 2010(2) page 692 even at appeal stage.

It is, therefore, prayed that the present application of the appellants/accused may kindly be allowed as prayed for, in the interest of justice.

Moga
Dt. 22.8.2014

Submitted by:-
Raj Kumar son of Jagan Nath
and another.
..... Appellants/accused

Through Counsel

(Avtar Singh Kamboj Adv.) Fzr./Moga.”

This application was opposed and reply filed by the prosecution.

Learned Sessions Judge, Moga vide impugned order dated 24.12.2014 dismissed the abovesaid application. Hence aggrieved, petitioners have approached this Court by way of instant petition.

Learned counsel for the petitioners submits that petitioners are entitled to lead additional evidence as the documents they seek to produce are relevant to the controversy in hand and go to the root of the matter. They had been found innocent during an inquiry which was conducted prior to the presentation of Challan/report under Section 173 Cr.P.C. Despite the preparation of cancellation report, Challan was presented against the petitioners by the police. Petitioners had examined DW1 Inspector Jasvir Singh who had earlier investigated the matter. Reference is made to Para 18 of the judgment dated 09.10.2013 passed by the learned trial court. It is further submitted that the said cancellation report is, in fact, a part of the record and it is not a new document which is sought to be produced by the petitioners. Therefore, it would be in the interest of justice to allow this application. Reliance is placed on **Umesh v. State of Rajasthan, 2004(4) RCR(Crl.) 785** and **Rambhau v. State of Maharashtra, 2001(2) RCR(Criminal) 721** to submit that the appellate court has very wide powers in the matter of permitting additional evidence under Section 391 Cr.P.C.

I have heard learned counsel for the petitioners and gone through the file.

There can be no quarrel regarding the power of the appellate court to

permit additional evidence being led in exercise of its power under Section 391 Cr.P.C. However, it is also settled that great care and caution has to be exercised while exercising power under Section 391 Cr.P.C. It is not a disguise for a retrial in case the party has had a fair opportunity and not availed of it. In such a situation, there would be no occasion for the appellate court to interfere while exercising power under Section 391 Cr.P.C.

In the present case, it is a matter of record that the petitioners had availed as many as 18 opportunities to lead defence evidence and it is thereafter that they closed their evidence. It cannot be said that they were not afforded sufficient opportunities to lead their evidence which, in fact, was led. Nothing is pointed out either from the application dated 22.08.2014 or even at this stage to show the reason as to why the cancellation report and the alleged report by DSP Surjit Singh could not be brought on record by the petitioners at the relevant stage.

Keeping in view the facts and circumstances of the case, I do not find any irregularity or infirmity in the impugned order dated 24.12.2014 passed by the learned Sessions Judge, Moga.

Consequently, this petition is dismissed.

None of the observations made hereinabove shall be construed to be a reflection on merits of the case and shall have no bearing on the pending appeal.

February 4, 2015.
'om'

(**LISA GILL**)
JUDGE