

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

CRM No.M- 35943 of 2014(O&M)

Date of Decision: January 15, 2015.

Gurlal Singh and another

..... PETITIONER (s)

Versus

State of Punjab

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: None 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.

This case had been adjourned on 18.11.2014 as none had come present on behalf of the petitioners. Learned counsel for the petitioners had sought time to address arguments on 26.11.2014 specifically on the point that it is necessary and imperative to decide an application under Section 391 Cr.P.C. for additional evidence prior to the decision of the main appeal. On 10.12.2014, prayer for adjournment was made and when the matter was listed again on 19.12.2014, learned counsel appearing for the petitioners prayed for yet another opportunity to address arguments. Today, none has put in appearance on behalf of the petitioners.

Prayer in this petition is for issuance of appropriate directions to “the court of learned Sessions Judge, Sri Muktsar Sahib to decide the application under Section 391 Cr.P.C. moved by the petitioners at the first instance i.e., before final disposal of the appeal filed by the petitioners against the judgment dated 30.05.2013 passed by the learned Additional Chief Judicial Magistrate, Sri Muktsar Sahib in case FIR No.168 dated 01.11.2008, under Sections 356/506/323/34 IPC, Police Station Sadar Muktsar”.

Petitioners in this case were convicted for offences punishable under Sections 356/323/506/34 IPC by the learned Additional Chief Judicial Magistrate, Sri Muktsar Sahib and sentenced to undergo imprisonment as under:-

<i>Accused</i>	<i>Offence U/s</i>	<i>Sentence</i>
Gurlal Singh	356 IPC	Rigorous imprisonment for 1-1/2 years, besides, pay a fine of ₹1,000/- and in default thereof, to undergo R.I. for fifteen days.
	323 IPC	Rigorous imprisonment for 1-1/2 years, besides, pay a fine of ₹700/- and in default thereof, to undergo R.I. for ten days.
	506 IPC	Rigorous imprisonment for six months, besides, pay a fine of ₹500/- and in default thereof, to undergo R.I. for ten days.
Vicky Randhawa @ J.P.Singh	356/34 IPC	Rigorous imprisonment for one year, besides, pay a fine of ₹700/- and in default thereof, to undergo R.I. for ten days.
	323/34 IPC	Rigorous imprisonment for six months, besides, pay a fine of ₹500/- and in default thereof, to undergo imprisonment for ten days.
	506 IPC	Rigorous imprisonment for six months, besides, pay a fine of ₹500/- and in default thereof, to undergo imprisonment for ten days.

Petitioners preferred appeal challenging the abovesaid judgment of conviction and order of sentence. An application under Section 391 Cr.P.C. for

leading additional evidence (Annexure P6) was also moved by the petitioners. They sought to produce certain documents by way of additional evidence.

In the present petition, petitioners aver that notice was issued in the application filed by them under Section 391 Cr.P.C. Reply thereto (Annexure P8) was filed by the Public Prosecutor. The matter was adjourned on a number of occasions i.e., 28.07.2014, 27.08.2014 and 08.09.2014 for consideration of the said application but the arguments were not heard. On 08.09.2014, the appellate court without considering the application under Section 391 Cr.P.C. posted the main appeal for final arguments for 04.10.2014 and as the arguments were not heard, the matter was adjourned to 21.10.2014. The petitioners express apprehension that their application under Section 391 Cr.P.C. may not be decided by the learned appellate court. It is essential to dispose of this application prior to the final disposal of the main appeal.

Petitioners have place on record the copy of Zimni orders dated 19.05.2014, 28.07.2014, 27.08.2014 and 08.09.2014 at Annexure P10 (collectively). A perusal thereof, clearly shows that the application under Section 391 Cr.P.C. has been adjourned alongwith the main appeal. There is no irregularity in the action of appellate court in listing the said application for hearing alongwith the main appeal. It is only when the matter is heard on merits, the appellate court shall be able to decide as to whether the application for leading additional evidence is necessary or not. In case, it is found that the application is justified and liable to be allowed, appropriate action would, nevertheless, be taken by the learned appellate court. No prejudice whatsoever would be caused to the petitioners in this manner. There is no vested right with

the petitioner to insist for a decision on application under Section 391 Cr.P.C. in the manner averred.

Accordingly, this petition is dismissed.

However, it is observed that the application under 391 Cr.P.C would, nevertheless, be considered and decided in accordance with law by the learned appellate court in accordance with law.

January 15, 2015.
'om'

(LISA GILL)
JUDGE