

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

**CRM No. M-5239 of 2013 (O&M)
DECIDED ON : JULY 27, 2015**

Manpreet Kant

...Petitioner

versus

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

- 1. Whether Reporter 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?***

Present : Mr. P.S. Ahluwalia, Advocate,
for the petitioner.

Mr. Deepak Garg, AAG, Punjab.

Mr. J.S. Ahluwalia, Advocate
for respondent No.2.

JASPAL SINGH, J

Challenge in this petition is to the order dated January 15, 2013 (Annexure P-6) passed by learned Additional Sessions Judge (Adhoc), Fast Track Court, Bathinda whereby, an application under Section 391 of the Code of Criminal Procedure (for short 'Cr.P.C) seeking permission to adduce additional evidence in Criminal Appeal No. 4 dated January 10, 2012 was dismissed.

2. Assailing impugned order dated January 15, 2013 (P-6), it has been ebulliently argued by learned counsel for the petitioner that the same is absolutely against the settled canons of law. Mis-appreciation of the provisions contained in Section 391 of the Code has resulted into miscarriage of justice. In fact, it is well

settled proposition of law that the Court should not be a simple spectator and has to play an active role for imparting justice to the parties. The Appellate Court has wide and unlimited powers to take all the relevant material necessary for adjudicating the controversy on merits during the pendency of appeal. But in the case in hand, learned trial Court while ignoring the afore-said principle of law has dismissed the application moved by the petitioner, that too without assigning any cogent reason.

3. On the other hand, learned State counsel as well as learned counsel for respondent No.2 have opposed the various submissions made by learned counsel for the petitioner submitting that the documents which have been sought to be produced by way of an additional evidence at the appellate stage were well within the knowledge of prosecution and the same were not proved and placed on record during trial. An application under Section 391 of the Code has been filed by the petitioner just to fill up the gaps and lacunas left in this case. Accordingly, they prayed for dismissal of instant petition.

4. After bestowing due consideration to the rival submissions made by learned counsel for the parties and scrutinizing the impugned order, this Court is of the considered view that there is no infirmity or illegality in the impugned order.

5. Admittedly, under Section 391 of the Code additional evidence can be permitted at the appellate stage when there is likelihood of failure of justice. It can only be allowed, if, it is required to promote the interest of justice. It is also pretty settled that discretion provided under Section 391 of the Code is required to be exercised sparingly and only in suitable cases and particularly where it is justified.

Moreover, such an exercise cannot be permitted in such a way as to cause

prejudice to either of the parties, which would appear as a disguise for a re-trial to change the nature of the case.

5. Adverting to the facts of the case in hand, prosecution examined as many as 10 witnesses. Thereafter, it closed evidence on July 21, 2011. Sufficient time was afforded to the prosecution to adduce and conclude its evidence. The documents intended to be produced by way of an additional evidence were very much in the knowledge and custody of petitioner. Moreover, application under Section 391 of the Code appears to have been filed just to fill up the lacunas which cannot be allowed, that too, at the appellate stage. Application has rightly been dismissed by the Court seisin of the appeal.

6. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such the same is dismissed.

JULY 27, 2015
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(JASPAL SINGH)
JUDGE