

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

Crl. Revision No. 923 of 2015(O&M)

Date of Decision: 24.08.2015

Jeet Kaur

.. Petitioner

Vs.

Pyare Lal & Ors.

.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. Aakash Singla, Advocate
for the petitioner.**

**Mr. Manik Garg, Advocate
for respondents No.1 to 4.**

**Mr. G.S. Salwara, DAG Haryana
for respondent No.5.**

ANITA CHAUDHRY, J.

Crl. Misc. No. 25840 of 2015 is allowed and photostat copies of photographs(Annexure P-5) and site plan (Annexure P-6) are taken on record.

The petitioner is aggrieved of order dated 09.03.2015 passed by the Additional Sessions Judge, Hisar, vide which her application filed under Section 391 Cr.P.C. for leading additional evidence at appellate stage, had been dismissed.

Respondents No.1 to 4 were tried in FIR No. 469 dated 12.09.2008, registered at Police Station Civil Lines, Hisar for offence under Sections 323, 452 and 506 IPC read

with Section 34 IPC on the allegations that all of them in furtherance of their common intention trespassed into the house of petitioner and caused injuries to her and her husband and also criminally intimidated them.

Respondents No.1 to 4 were acquitted by the Magistrate vide judgment dated 16.04.2014. Dis-satisfied with the same, petitioner filed an appeal before the Sessions Court. During pendency of the appeal, she filed an application seeking permission to lead additional evidence and wanted to produce photographs and a site plan of her house and certified copies of some statements recorded in the Court in a complaint case.

Vide order dated 09.03.2015 the application was dismissed. Aggrieved with the same, instant revision petition has been filed.

Petitioner is the mother of Gursharan Singh, whose marriage was solemnized with Sunita daughter of respondent Pyare Lal. The parties were having strained relations as the marriage had failed.

The grouse of the petitioner is that the documents sought to be produced by way of additional evidence are essential for just and proper decision of the case and the appellate Court ought to have allowed her to produce the same for complete justice.

From a plain reading, it is abundantly clear that Section 391 forms an exception to the general rule that an appeal must be decided on the evidence which was before the Trial Court and the powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice.

In the instant case, the petitioner wants to produce on record some photographs and site plan of the house which she claimed to be her house where the alleged occurrence had taken place. A perusal of the application filed under Section 391 Cr.P.C. shows that there is not even a whisper in the application as to why those documents could not be produced when the evidence of prosecution was going on. It is also not the case of the complainant that the said documents were not in existence when the evidence was going on. Had the complainant been aggrieved with the site plan submitted by the police with the challan or the place of occurrence as shown by the police, she would have objected at the trial. These documents are not coming from public record and mere production will not help the petitioner.

Even otherwise, the appeal was filed on 03.05.2014 and the application was filed after seven months on 17.01.2015. The occurrence took place in the year 2008

and after a lapse of about seven years, the complainant wants to show the spot as it exists now, which cannot be permitted. Merely placing the documents would not mean that they have been proved. The move of the complainant is nothing but an exercise to fill up the lacuna. It is settled that the additional evidence cannot and ought not to be received in such a way so as to cause prejudice to the accused. The order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it.

In view of the above, there is no illegality or perversity in the order passed by the Court below. Revision petition is dismissed. However, it is made clear that the observations made are without prejudice to the merits of the pending appeal.

August 24, 2015
Jiten

(ANITA CHAUDHRY)
JUDGE