

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

Criminal Appeal No.213 of 1999

Shyamlal and Another **Versus** State of Madhya Pradesh (Now State of Chhattisgarh)

27/09/2016	Mr.Arun Kochar, Advocate for the appellants. Mr.Vinod Deshmukh, Dy.G.A. for the State. Heard on I.A.No.1/2016 i.e. application under Section 391 of the CrPC. 01. This is an application filed on behalf of the appellants under Section 391 of the CrPC for taking their additional documents on record filed on 29.8.2016 stating that these documents are FIR and other documents of counter/cross case registered against complainant Munna Tiwari @ Shrawan Kumar and two others, which was subject-matter of Sessions Trial No.92/1993 being Criminal Appeal No.247/1999. 02. Mr.Arun Kochar, learned counsel for the appellants, would submit that the aforesaid documents are necessary for proper adjudication of the instant appeal as the FIR lodged by appellant No.1, Crime No.430/1992 for offence under Sections 458 and 398 of the IPC were registered against the complainants Munna Tiwari @ Shrawan Kumar and two others and they were tried and convicted also by the trial Court, as such the documents of that criminal cases including	

judgment of that case may be taken on record as additional documents in this case for proper adjudication of this appeal.

03. Learned State counsel however would oppose the application.

04. We have heard learned counsel for the parties on the said application.

05. It is appropriate to notice that the trial Court delivered its judgment on 13.1.1999, the appeal was filed on 21.1.1999 and the argument in this appeal was heard in part on 23.8.2016 and the case was listed on 29.8.2016 for further hearing, then only such application under Section 391 of the CrPC came to be filed on behalf of the appellants. There is no explanation for delay of 16 years in filing this application.

06. Section 391 (1) of the CrPC provides as under:-

“391. Appellate Court may take further evidence or direct it to be taken.- (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.”

07. It is well settled that Section 391 of the CrPC forms an

exception to the general rule that an appeal must be decided in the evidence which was before the trial Court and powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice and the additional evidence can be taken at the appellate stage in exceptional circumstances to remove an irregularity where circumstances so warrant in public interest.

08. Their Lordships of the Supreme Court in the matter of **Ashok Tshering Bhutia Vs. State of Sikkim**¹ after taking due note of the earlier pronouncements highlighted the object of Section 391 of the CrPC as under:-

“The primary object of the provisions of Section 391 CrPC is the prevention of a guilty man's escape through some careless or ignorant action on part of the prosecution before the court or for vindication of an innocent person wrongfully accused, where the court omitted to record the circumstances essential to elucidation of truth. Generally, it should be invoked when formal proof for the prosecution is necessary [Vide Rajeswar Prasad Misra v. State of W.B.², Ratilal Bhanji Mithani v. State of Maharashtra³, Rambhau v. State of Maharashtra⁴, Anil Sharma v. State of Jharkhand⁵, Zahira Habibulla H. Sheikh v. State of Gujarat⁶ and Manu Sharma v. State (NCT of Delhi)⁷].”

Their Lordships of the Supreme Court have further concluded as

1 (2011) 4 SCC 402
2 AIR 1965 SC 1887
3 (1971) 1 SCC 523
4 (2001) 4 SCC 759
5 (2004) 5 SCC 679
6 (2004) 4 SCC 158
7 (2010) 6 SCC 1

to when an additional evidence at the appellate stage is permissible by holding as under:-

“28. Additional evidence at the appellate stage is permissible, in case of a failure of justice. However, such power must be exercised sparingly and only in exceptional suitable cases where the court is satisfied that directing additional evidence would serve the interests of justice. It would depend upon the facts and circumstances of an individual case as to whether such permission should be granted having due regard to the concepts of fair play, justice and the well-being of society. Such an application for taking additional evidence must be decided objectively, just to cure the irregularity.”

In the aforesaid judgment, Their Lordships also took note of the earlier judgments of the Supreme Court in the matters of State of Gujarat v. Mohanlal Jitamalji Porwal⁸ and Rambhau (supra) and concluded as under:-

“32. In view of the above, the law on the point can be summerised to the effect that additional evidence can be taken at the appellate stage in exceptional circumstances, to remove an irregularity, where the circumstances so warrant in public interest. Generally, such power is exercised to have formal proof of the documents, etc. just to meet the ends of justice. However, the provisions of Section 391 CrPC cannot be pressed into service in order to fill up lacunae in the prosecution case.”

09. We have examined the application filed by the appellants in the light of proposition of law laid-down by Their Lordships of the Supreme Court in the above-stated judgments. We are of the view that

B/-	this is not one of the exceptional circumstances where power and jurisdiction of taking additional evidence can be exercised in favour of the appellants particularly when the appellants are seeking to file FIR and other documents initiated against the complainant at the instance of appellant No.1 in view of the judgment of the Supreme Court in the matter of <u>Mitthulal and another vs. The State of Madhya Pradesh</u>⁹, in which Their Lordships of the Supreme Court have held that the appellate Court in deciding the appeal cannot refer to the evidence in the cross case and appeal must be decided on the evidence admitted in that case itself and also further taking the view that extent of delay in filing such application, we decline to entertain the said application. 10. Accordingly, I.A.No.01/2016 is rejected. Sd/- (Deepak Gupta) Chief Justice Sd/- (Sanjay K.Agrawal) Judge	
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