

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

CRM-M-11278 of 2016.
Decided on:-01.04.2016.

Harinder Singh and others

.....Petitioners.

Versus

State of Punjab.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

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

Present:- Mr. Dhiraj Chawla, Advocate
for the petitioners.

HARI PAL VERMA, J.

The petitioners have filed the present petition under Section 482 Cr.PC seeking direction to the Court of learned Additional Sessions Judge, Amritsar to decide the application under Section 391 Cr.PC in FIR No.75 dated 2.6.2006 under Section 420 IPC registered at Police Station Chheharta, District Amritsar. By way of said application, the petitioners intend to lead additional evidence in Criminal Appeal No.521/90 of 2014 stated to be pending before the lower appellate Court for 18.4.2016.

Learned counsel for the petitioners has argued that the

petitioners have wrongly been convicted by the trial Court. The allegations against petitioner No.1 are that he had taken money from the complainant for sending his son abroad and the said commitment was never honoured.

Learned counsel for the petitioners has further contended that as per the FIR, the complainant had made payment in cash to petitioner No.1 on 23.6.2006, 4.8.2002, 28.8.2002, 21.11.2003 and 22.11.2003 and the same version has been reiterated by the complainant in his evidence. However, except the bare statement of the complainant, there is no evidence against the petitioner No.1 that the money was handed over to him. Learned counsel has further argued that the petitioner No.1 was not in India during the relevant period. Though the said stand was taken before the trial Court, but on account of miscommunication and negligence on the part of petitioner No.1, aforesaid fact and documents could not be brought on record.

It has further been contended that in support of the fact that during the aforesaid dates, the petitioner No.1 was not in India, petitioner No.1 has attached photocopy of his passport.

I have heard learned counsel for the petitioner.

Provision of Section 391 Cr.PC reads 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.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.”

Perusal of the aforesaid provision reveals that undoubtedly, additional evidence can be considered even at the appellate stage, but for that purpose, one must have a reasonable plea for not producing the said evidence during trial.

In the present case, stand of the petitioner No.1 is that he was not in India on the relevant dates when the money was given by the complainant to him for which the petitioners have filed an application under Section 391 Cr.PC before the lower appellate Court. However, the petitioners cannot insist decision on the said application independently or before decision of the appeal. The Court may simultaneously decide the application as well as the appeal as there is no bar under the law. As such, no illegality has been committed by the lower appellate Court as the application under Section 391 Cr.PC filed by the petitioners for leading additional

evidence has been taken up for hearing along with the main appeal.

Accordingly, there is no merit in the present petition and the same is, thus, dismissed.

April 01, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE