
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.108

CRR No. 1207 of 2016
DECIDED ON: March 29, 2016

RATI RAM

..PETITIONER

VERSUS

DHANI RAM

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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?

Present: Mr. Gautam Dutt, Advocate, for the petitioner.

JASPAL SINGH, J

Instant petition has been preferred by Rati Ram being aggrieved against the order dated January 6, 2016 passed by learned Sessions Judge, Gurgaon, in Criminal Appeal No. 75/CRA of November 29, 2014 captioned as “Rati Ram Vs. Dhani Ram”, whereby an application moved by the petitioner under Section 391 Cr.P.C. read with Section 91 and 311 Cr.P.C as well as Section 162 of the Indian Evidence Act, 1872, to summon the witnesses mentioned therein has been declined.

Briefly stated the facts giving rise to the facts that the petitioner has been convicted and sentenced under Section 138 of the Negotiable

Instruments Act, vide judgment dated 29 October, 2014 and aggrieved against his conviction and sentence, he preferred an appeal, which is pending disposal before the Additional Sessions Judge, Gurgaon. During the pendency of the said appeal, an application under Section 391 Cr.P.C. has been filed seeking summoning of the following defence witnesses:-

- “1. Record keeper Rohini Courts, Delhi, along with the case file titled as Rajender Kumar Vs. Rati Ram, decided on May 25, 2011 by Sh. Sachin Gupta, Metropolitan Magistrate, Rohini Courts, Delhi.
2. Clerk concerned form the office of District Health Office, Civil Surgeon, Gurgaon.
3. Registration Clerk from the office of Sub Registrar, Farrukh Nagar along with the records of sale deeds dated March 28, 2012 and June 27, 2012.
4. Concerned Clerk from Oriental Bank of Commerce, Village Kanhai, along with the statements of account of Parveen Kumar and Birmati son and wife of Rati Ram for the period from January, 2011 and December 2013.

The contention of the learned counsel for the petitioner is that an application moved by the petitioner under Section 391 Cr.P.C. has been illegally and wrongly dismissed by the lower appellate court. Through this application moved before the lower appellate court, petitioner intends to summon the witnesses just to falsify case of the complainant-respondent. The case of the complainant is that he met the father of the accused/petitioner in the year 2009 which is improbable as the father of the accused-petitioner had already passed away on September 30, 1998 i.e. 11 years ago. Similarly, the sale deed sought to be proved on record is likely to

clarify the position that the cheque in question was issued in discharge of legal debt/liability or it was in discharge of agreement to the sale.

The contention of the learned counsel for the petitioner is that due to inadvertence, the petitioner could not examine the aforesaid witnesses during the pendency of the trial before the Magistrate and the proposed evidence of registration Clerk from the office of Sub Registrar, Farrukh Nagar, shall prove the sale deeds to establish the sound financial position of the petitioner. Moreover, the production of the documents and examination of the witnesses under Section 391 Cr.P.C. is not likely to cause any prejudice to the respondent.

After bestowing due consideration to the aforesaid submissions and scrutinized the impugned order, this Court of the considered view that the same are without any legal substance.

No doubt, under Section 391 Cr.P.C. or under Section 311 of the Code of Criminal Procedure, this Court has vide powers to summon any witness at any stage of the trial including appellate stage, though, not examined as a witness earlier or recall or re-examine any person already examined. But before allowing any such application, the Court is to satisfy itself that the evidence of the witnesses sought to be recalled or summoned is essential for the just decision of the case.

Adverting to the facts of the case in hand, the petitioner was well aware of the evidence to be adduced by him in defence during his trial before the trial court but he did not opt to examine the witnesses which have been sought to be examined by way of additional evidence by moving the application under Section 391 at the appellate stage. It can't be said that the

petitioner was not aware or was not in possession of the documents which have been sought to be proved by way of additional evidence. Moreover, the Court has to see the relevancy of the documents or the evidence to be adduced. The production of those documents or the examination of witnesses can only be allowed, if the Court considers it essential for the just and proper adjudication of the matter in controversy.

By moving an application under Section 391 Cr.P.C., the petitioner with mala fide intention, intends to get his conviction and sentence set aside with a view to re-open the case which cannot be allowed. The application moved under Section 391 Cr.P.C. is nothing but a novel device adopted by the petitioner to scuttle down the rights accrued to the respondent - complainant, which cannot be permitted at the stage.

Thus, this Court is of the considered view that the impugned order passed by the learned lower appellate court is absolutely in consonance with the settled proposition of law. Finding no infirmity or illegality in the impugned order and further that the instant petition is without any merit, the same is dismissed by upholding the impugned order dated January 06, 2016.

March 29, 2016

Ankur

**(JASPAL SINGH)
JUDGE**