

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Revision No.2379 of 2015 (O & M)

Date of Decision: *January 18, 2016*

Rajinder Singh

..... PETITIONER

VERSUS

Jagtar Singh

..... RESPONDENT

...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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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?

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PRESENT: - Mr. Gagandeep Toni, Advocate, for the petitioner.

Mr. I.S. Pabla, Advocate, for the respondent.

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Jaspal Singh, J

1. Challenge in this revision petition is to order dated April 4, 2015 passed by learned Additional Sessions Judge, Chandigarh whereby an application dated January 14, 2015 under Section 391 Cr.P.C. moved by the petitioner – Rajinder Singh was dismissed, during pendency of an appeal

preferred by Jagtar Singh (respondent herein) against judgment of conviction and order of sentence dated January 21, 2014 passed by the Judicial Magistrate Ist Class, Chandigarh, whereby Jagtar Singh was sentenced to undergo RI for a period of one year and to pay compensation to the tune of ₹ 9,75,000/-.

2. The contention of learned counsel for the petitioner is that as per the allegations contained in complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'Act'), the complainant – respondent has specifically alleged that the petitioner arranged for taking sister of complainant to England by charging some money but the complainant did not examine his sister namely Manjit Kaur during trial for the reasons best known to him. Ultimately, earlier also, an application under Section 391 Cr.P.C. was moved seeking permission of the Court to examine aforesaid Manjit Kaur as a defence witness but the said witness could not be cross-examined by the petitioner as his counsel was busy in some other Court. Request was made to the concerned Court time & again, but the Court opted to close the evidence on December 5, 2014 by mentioning the words 'opportunity given' 'Nil'. In her examination in chief, Manjit Kaur has categorically deposed that the petitioner never received any amount from her

family. Moreover, no amount was also transferred either from the account of Mandeep Kaur in the year 2004 or from the account of Paramjit Kaur. Passing of order dated December 5, 2014 further necessitated the filing of another application under Section 391 Cr.P.C. for summoning four witnesses mentioned therein to establish that statement made by Manjit Kaur is false and is not having any truth. Though, evidence of the witnesses sought to be produced by way of additional evidence was necessary for proper adjudication of the matter but it was declined on frivolous grounds which has rendered in causing great prejudice to the petitioner. Otherwise also, the respondent – complainant is not likely to suffer any loss or injury, in case application is allowed, rather it would advance the cause of justice.

3. On the other hand, learned counsel for the respondent has supported the impugned order. He has argued with vehemence that petitioner did not intentionally cross examine the witness just on the pretext that his counsel is busy in some other Court, who was to return to England. Subsequent thereto, he filed another application which has been dismissed by virtue of impugned order. The examination of the witnesses is neither essential nor necessary for proper adjudication,

especially in the circumstances that there is no such case put-forth by the petitioner that any amount has been transferred from the account of Mandeep Kaur or Paramjit Kaur in the year 2004 or 2005 to the account of respondent – Jagtar Singh.

4. Learned counsel for the respondent has further contended that earlier also, Criminal Revision No.4239 of 2014 against earlier order, was also dismissed vide a detailed order dated December 3, 2014. Filing of another application is nothing but to fill the lacunae in this case.

5. This Court has given an anxious thought to the aforesaid rival submissions of learned counsel for the parties and has scrutinized the impugned order.

6. Undisputably, during pendency of the appeal preferred by Jagtar Singh – respondent before the lower appellate court. An application under Section 391 Cr.P.C. was filed which was allowed. But Manjit Kaur was not cross examined by the present petitioner for reasons best known to him and by passing a detailed order, cross examination was declared 'Nil'. To over-come the said order, another application under Section 391 Cr.P.C. dated January 14, 2015 was filed to summon as many as four witnesses. Rajinder Singh – petitioner preferred criminal revision petition challenging order dated

January 5, 2014 but that was dismissed by this Court vide order dated December 23, 2014. Subsequent thereto, another application was filed which was dismissed by the lower appellate court vide impugned order dated April 4, 2015.

7. Second application moved under Section 391 Cr.P.C. is nothing but an abuse of the process of Court to delay the disposal of the appeal. Moreover, the evidence sought to be produced by way of additional evidence is not relevant for proper & effective adjudication of the matter in controversy. Rather, filing of another application is just to circumvent the earlier order passed by the lower appellate court which has already been upheld by this Court. Thus, this Court does not find any merit in the instant revision petition.

8. Dismissed.

January 18, 2016
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(Jaspal Singh)
Judge