

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

Criminal Revision No.1489 of 2016 (O&M)

Date of decision: 16th May, 2016

Sandeep Sharma

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Brijender Kaushik, Advocate,
for the petitioner.

Mr. D.R.Singla, DAG, Haryana,
for the respondent(s)-State.

INDERJIT SINGH, J.

Petitioner Sandeep Sharma has filed this revision petition under Section 401 Cr.P.C. against respondent-State of Haryana, challenging the impugned order dated 11.02.2016, passed by the learned Addl. Sessions Judge, Panchkula, in criminal appeal, vide which the application filed by respondent-State of Haryana, under Section 391 Cr.P.C., has been allowed.

Notice of motion was issued. Learned State counsel appeared and contested the instant petition.

From the record, this Court finds that an appeal is pending before the learned Additional Sessions Judge, Panchkula in which an application under Section 391 Cr.P.C. was filed by respondent-State of Haryana. In the said application, it is stated that prosecution has filed an appeal against judgment of acquittal dated 31.07.2013, passed by the learned Chief Judicial Magistrate, Panchkula. As per prosecution, the allegations against accused-petitioner Sandeep Sharma are that he represented himself to be a doctor having qualification of MBBS degree and he wrongly and illegally took financial aid from the office of Civil Surgeon, Panchkula on

the basis of false and forged degree of MBBS. It is also stated in the application that trial Court has ignored the statements of prosecution witnesses who have deposed that accused was not possessing any MBBS degree and he is simply 10+2 standard pass and this fact has been admitted by him in the bail application being maintained by him before this Court. Learned Appellate Court, after discussing the provisions of Section 391 Cr.P.C., allowed the application for leading additional evidence vide which the prosecution wants to produce certain documents, preferred by accused in which he has claimed that he has studied only upto 10 +2 and he did not possess any MBBS degree. The learned Appellate Court has held that the additional evidence is very much necessary for adjudicating the matter effectively by the Court. The application was accepted and the direction was given to the respondent-State to adduce additional evidence before the learned trial Court and the learned trial Court shall grant three effective opportunities to examine witnesses. The learned trial Court is further directed to send its report within two months from 16.02.2016.

At the time of arguments, learned counsel for the petitioner contended that whether the application can be allowed by the learned Appellate Court. He further contended that when the prosecution is saying of producing documents, whether the witnesses can be allowed to be examined in additional evidence. Learned counsel for the petitioner further contended that this application is only to fill up the lacuna.

On the other hand, learned State counsel contested the instant revision petition.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

This Court finds that as per Section 391 Cr.P.C., application can be filed before the Appellate Court for producing additional evidence. The learned Appellate Court in its order has held that the only dispute which requires determination is whether the accused possesses MBBS degree or not. In the bail application, the accused before this Court, has submitted that he is only 10 +2 pass and he has no MBBS degree. The prosecution wants to produce those documents. The mere production of those documents will not be a proof as per Evidence Act. Therefore, these documents can be proved by bringing the witnesses. No illegality has been committed by the learned Appellate Court while accepting the application under Section 391 Cr.P.C. The evidence, as stated, is necessary for adjudicating the matter effectively by the Court and in no way, it can be held as filling up of lacuna. The present revision petitioner shall get the opportunity to cross-examine the witnesses, produced by prosecution in additional evidence.

From the above discussion, this Court finds that the impugned order, passed by the learned Appellate Court is correct and as per law and it does not require any interference by this Court.

Therefore, finding no merit in the instant petition, the same is dismissed.

16th May, 2016
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(INDERJIT SINGH)
JUDGE