

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

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**CRM-M-11338-2016 (O&M)
Date of Decision: 28.08.2017.**

Kuldeep Singh and others	Versus	Petitioners.
State of Punjab		Respondent.

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Vipin Mahajan, Advocate for the petitioners.
Ms. Bhavna Gupta, Deputy Advocate General, Punjab.

Ramendra Jain, J.(Oral)

In this petition under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.'), prayer has been made for setting aside the order dated 11.03.2016 (Annexure-P5) passed by first appellate Court in Appeal No.131 dated 09.04.2014, titled 'Kuldeep Singh and others vs. State of Punjab', dismissing the application of the petitioners under Section 391 Cr.P.C. for additional evidence.

Briefly stated, F.I.R. No.38 (Annexure-P1) dated 10.08.2005 was registered against the petitioners for causing injuries to complainant Kuldeep Singh and one Jagdeep Singh. Since the petitioners had also sustained injuries in this very incident at the hands of the complainant party and were medico legally examined, they also filed a complaint against the complainant.

After due trial, the petitioners were held guilty vide judgment of conviction dated 27.03.2014 under Sections 148, 323, 324, 326 read with Section 149 IPC and were sentenced to undergo for a maximum period of three years under Section 326 read with Section 149 IPC vide order of

sentence of even date. On the other hand, the complaint filed by the petitioners against the complainant was dismissed by the Court in the year 2016.

Being aggrieved, the petitioners challenged their conviction and sentence in appeal before the first appellate Court as well as the order of dismissal of their complaint before this Court by moving an application under Section 378(4) Cr.P.C.

The first appellate Court dismissed the application of the petitioners under Section 391 Cr.P.C. for leading additional evidence vide order dated 11.03.2016 (Annexure-P5) and has been assailed herein.

Learned counsel for the petitioners contends that the evidence sought to be produced by way of additional evidence was Government record in the shape of M.L.R. and thus, there was no possibility of any interpolation in the same. Had the M.L.Rs of the petitioners been produced before the trial Court, they would not have been convicted, considering the injuries suffered by them at the hands of the complainant side. Non production of the MLRs' of the petitioners on record has caused serious prejudice to them.

On the other hand, learned counsel for the respondent-State vehemently opposed the submissions made by learned counsel for the petitioners. She contends that according to the impugned order 49 effective opportunities were given to the petitioners to lead their defence evidence right from 02.08.2011 to 27.03.2014 and therefore, the petitioners do not deserve any concession from this Court. She also contends that the M.L.R., proving injuries to the petitioners, were not necessary to be proved for the simple reason that the petitioners had filed their separate complaint against

the complainant party into the Court in which they produced and proved the MLR's in question.

I have given my anxious consideration to the submissions made by both the sides.

For facility of reference, Section 391 Cr.P.C. is reproduced hereunder:-

“(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.”

Section 391 Cr.P.C. forms an exception to the general rule that an appeal must be decided on the evidence which was before the trial Court and the power, being an exception, shall always have to be exercised with caution and circumspection so as to meet the ends of justice. Bombay High Court in **Mamatadevi w/o Prafullakumar Bhansali v. Vijaykumar Mamraj**

Agrawal, 2008, CriLJ 970 has observed that on an analysis of the Civil

Procedure Code, Section 391 Cr.P.C. is akin to Order XLI Rule 27 of the Civil Procedure Code, which lays down following conditions to seek permission for leading additional evidence:-

- “(i) *The evidence sought to be produced by way of additional evidence was refused to be admitted by the trial Court;*
- (ii) *The same was not within the knowledge at the appropriate time;*
- (iii) *It was the result of some subsequent event.”*

In the application under Section 391 Cr.P.C., the petitioners have taken stand that Kuldeep Singh (petitioner No.1) suffered injuries at the hands of the complainant party and was medico legally examined by Dr. Raj Kumar, Civil Hospital, Pathankot. Dr. Harsh Mahajan, Radiologist conducted X-ray and Dr. Tarsem Singh, Medical Officer, Civil Hospital, Pathankot orthopedically examined Kuldeep Singh. Although, the statements of all the three doctors were recorded in the cross complaint case and M.L.R. was also produced, but these witnesses could not be examined by the petitioners in their defence evidence due to some oversight.

However, the petitioners cannot be permitted to take the said plea in view of **Enugukonda Venkata Raghavacharyulu and others v. Pushpagiri Mattam Cuddapah Dist. and another, 2004(1) LJR 2** wherein it has been held that when a party had knowledge about existence of documents, in that eventuality, it may not be appropriate to lead additional evidence. In the instant case, the statements of the petitioners under Section 313 Cr.P.C. were recorded on 04.07.2011 and the case, for the first time, was adjourned to 02.08.2011 for defence evidence. Thereafter, 49 effective opportunities were granted to the petitioners to conclude their defence evidence.

Perusal of the impugned judgment of conviction dated 27.03.2014 passed by the trial Court shows that as per their statements under Section 313 Cr.P.C., the petitioners were present at the spot on the date of occurrence, but no evidence has been produced on record by them to prove that it was the complainant party, who was the aggressor. The complaint filed by the petitioners against the complainant was dismissed by the Court in the year 2016.

More so, the evidence/document, which the petitioners now want to lead in their defence, was very much in their knowledge from the very beginning as they have produced the same in their cross case. Therefore, in the considered opinion of this Court, the First Appellate Court has correctly disallowed the petitioners from producing any additional evidence to fill up the lacuna, more particularly, when the petitioners did not fulfil the necessary conditions enumerated above to lead additional evidence.

In view of the above discussion, learned first appellate Court rightly dismissed the application under Section 391 Cr.P.C. and thus, there being no illegality or perversity in the order impugned, the present petition is dismissed.

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Since the main petition itself has been dismissed, the instant application seeking stay of further proceedings in the appeal before the first appellate Court is also dismissed.

(RAMENDRA JAIN)
JUDGE

28.08.2017
jitender sharma