

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

**CRM No.M-39954 of 2014
Decided on: 03.11.2017**

Avtar Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Veneet Sharma, Advocate
for the petitioner.

Ms. Rajni Gupta, Sr. DAG, Punjab.

Ms. Payel Mehta, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for quashing the order dated 12.11.2014 (Annexure P5) passed by the Lower Appellate Court vide which the application filed under Section 391 Cr.P.C. filed by the petitioner for leading additional evidence has been dismissed in criminal complaint No.10 dated 10.04.2002.

Brief facts of the case are that the respondent/complainant filed a complaint under Section 18(a)(i) read with Section 17-A punishable under Section 27(b)(i) of the Drugs and Cosmetics Act, 1940 (in short 'the Act') with the allegations that on 19.03.2001, samples were drawn by the Drugs Inspector/complainant from the shop of one M/s. G.S. Sons and out of 03 samples, 01 sample of drug tables Novigin was found to be of sub-standard. As per the complaint, the manufacturer of this drug was M/s. Tecad Pharma Pvt. Ltd. and distributor was M/s. G.S. Sons Pharmaceutical from whose premises

the samples were drawn. As per para 3 of the complaint (Annexure P1) at the time of inspection by the Drug Inspector on 19.09.2001, father of the petitioner – Gurbax Singh was found present as in-charge of M/s. G.S. Sons Pharmaceutical. Gurbax Singh, father of the petitioner was the managing partner of accused – M/s. G.S. Sons Pharmaceutical and after his death on 13.04.2006, the petitioner is facing the trial.

The trial Court vide its judgment of conviction dated 23.11.2011 held the petitioner guilty of offences punishable under Section 18(a)(i) read with Section 17-A of the Act held that the petitioner has committed the offence punishable under Section 27(b)(i) of the Act read with Section 120-B IPC. Vide order of sentence dated 25.11.2011, the petitioner was sentenced to undergo rigorous imprisonment for a period of 02 years and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 02 months.

Thereafter, the petitioner filed an appeal challenging the judgment of conviction and order of sentence. During pendency of the appeal, the petitioner has filed an application under Section 391 Cr.P.C. for leading additional evidence and the same was dismissed vide impugned order dated 12.11.2014.

Counsel for the petitioner has submitted that while convicting the petitioner, the trial Court has recorded a finding that M/s. Tecad Pharma Private Limited has been declared as proclaimed offender in this case and separate proceedings will be initiated against the same. He has also referred to paragraph 14 of the judgment where the trial Court has held that no doubt photocopy of the bill pertaining to

tablet Novigin bearing batch No.129-A was supplied by the accused to the Drugs Inspector in response to show cause notice Ex.CW2/M i.e. vide his letter dated 20.10.2001 Ex.CW2/J, but throughout the trial it remained a mystery as to why the accused has with-held the original bill and produced photocopy of the same as Annexure XII.

Counsel for the petitioner has further submitted that in the latter part of the judgment in paragraph 18, the trial Court has recorded a slightly contrary finding that the firm i.e. M/s. Tecad Pharma Private Limited was otherwise a non-existent firm in the record and as such, it has duped the helpless patients. It is, thus, submitted by counsel for the petitioner that the application filed before the Lower Appellate Court under Section 391 Cr.P.C. was to produce on record certain documents which are relevant for the purpose of deciding the appeal in a just and proper manner. These document goes to root of the case and, thus, are sought to be produced as per application under Section 391 Cr.P.C. which is reproduced as under:-

“2. That the appellant/applicant intends to prove following documents on record by way of additional evidence:

- i) Bill No.105 dated 07.07.2000 issued by M/s Tecad Pharma Private Limited.*
- ii) Memorandum and Articles of Association of M/s Tecad Pharma Private Limited.*
- iii) Certificate of incorporation of M/s. Tecad Pharma Private Limited.*
- iv) Original agreement dated 01.03.1999 executed between M/s Tecad Pharma Private Limited and G.S. Sons Pharmaceuticals.*
- v) Copy of account of Punjab National Bank of*

the account of M/s. G.S. Sons for the relevant period showing payments made through cheque to M/s. Tecad Pharma Private Limited.

vi) Invoice No.4850 dated 06.11.2001 issued by M/s. G.S. Sons showing return of goods to M/s. Tecad Pharma Private Limited.

vii) Eleven numbers of G.Rs issued by M/s The Swami Transport Co. (Regd.) Kurali showing supply of goods by M/s Tecad Pharma Private Limited to M/s. G.S. Sons.

3. That the production and proving on record of aforesaid documents is very necessary for the just and effective disposal of the appeal in hand as these documents would prove that protection of Section 19(3) of Drugs and Cosmetics Act was available to the applicant which has been wrongly denied to him by the ld. trial Court.

4. That all the documents are in possession of the applicant and he would have no difficulty in producing and proving the same on record and thus there is no likelihood of an unnecessary and uncalled for delay in the disposal of appeal.”

Counsel for the petitioner has submitted that the Lower Appellate Court while passing the impugned order held that the powers under Section 391 Cr.P.C. cannot be exercised for the purpose of filling up lacuna and no explanation has been given in the application that how these documents are necessary for just decision of the case. It is also observed that it is not mentioned in the application that why these documents were not produced before the trial Court and, therefore, the application was dismissed vide impugned order dated 12.11.2014. Counsel for the petitioner has further submitted that though it is well

settled principle of law that powers under Section 391 Cr.P.C. are to be used by the Appellate Court sparingly, however, in the present case since, the petitioner has challenged his conviction/order of sentence of 02 years, the Lower Appellate Court should have exercised its powers by allowing the application filed under Section 391 Cr.P.C. for the reasons that firstly, the petitioner was not representing the co-accused – M/s. Tecad Pharma Private Limited and the documents i.e. Memorandum of Articles of M/s. Tecad Pharma Private Limited was not required to be produced by the petitioner as the co-accused. Secondly, the agreement between M/s. G.S. Sons Pharmaceutical, which was executed between the deceased, father of the petitioner with M/s. Tecad Pharma Private Limited, the co-accused could not be produced as the father of the petitioner has died on 13.04.2006 during the pendency of the trial and he was not aware of the originals which he has found now and similarly, the certain documents regarding the sale and purchase of the drugs are also relevant for just and proper decision of the case.

Counsel for the petitioner has heavily relied upon the bill dated 07.07.2000 which has been discussed by the trial Court and ignored on the ground that it is only a photocopy, and submits that the original of this bill was found later on from the records which was maintained by the deceased father of the petitioner and it being an original document, it goes to the root of the case for proving the innocence of the petitioner who has been convicted by the trial Court.

On the other hand, counsel for the State assisted by counsel for respondent No.2 have opposed the contentions raised by counsel for the petitioner on the ground that the trial remain pending

since 2000-11 for a period of about 10 years and no such application was moved at that stage and even after filing of this application in the year 2011, the application under Section 391 Cr.P.C. has been filed after a period of 04 years without explaining any delay and in fact, the additional evidence sought to be produced by the petitioner is just to fill up the lacunas.

After hearing counsel for the parties, I find merit in the present petition. Section 391 Cr.P.C. provides that while dealing with an appeal, the Appellate Court may take further direction or direct it to be taken. As such, there is no limitation before the Appellate Court to entertain an application at any stage prior to passing of the final judgment and, therefore, the objection of the respondents that application was filed after about 04 years of filing of the appeal is not sustainable. The other objection raised by counsel for the respondents is that the evidence now sought to be produced, as observed by the Lower Appellate Court, that it amounts to filling up the lacunas is also not based on proper appreciation of provisions of Section 391 Cr.P.C. In fact, the petitioner is an accused and by additional evidence, in evidence, in his defence, he want to prove his innocence and, therefore, it cannot be said that he is trying to fill up a lacuna, a plea which may be available to an accused person if, in case the prosecution is allowed to lead additional evidence. Counsel for the petitioner has relied upon ***“Sudevanand vs State through CBI and other connected cases”*** 2012(1) RCR (Criminal) 662 wherein the Hon'ble Supreme Court has held that the power of the Appellate Court is not limited to recall a witness for further cross-examination but in a given case, it may allow

taking additional evidence while recording a finding that the evidence is necessary to arrive at a just decision of the case. The law casts a duty upon the Court to arrive at a truth by all lawful means and thus, the powers given to the Appellate Court under section 391 Cr.P.C. to allow leading of additional evidence is to do justice between the parties.

For the foregoing reasons, the petition is allowed; the application filed under Section 391 Cr.P.C is allowed and the impugned order is set-aside.

Since, the appeal pertains to the year 2011 and passing of the final order by the Lower Appellate Court was stayed by this Court vide order dated 21.11.2014, the Lower Appellate Court is directed to dispose of the appeal within a period of 06 months from today. The parties are directed to appear before the Lower Appellate Court on 14.11.2017.

(ARVIND SINGH SANGWAN)
JUDGE

03.11.2017
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No