

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

CRM-M-40019-2017

Date of decision: 26.10.2017

Mahesh Kumar Mittal

...Petitioner

Vs.

Gurdeep Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. R. S. Randhawa, Advocate
for the petitioner.

SUDIP AHLUWALIA, J. (Oral)

1. This petition is directed against the order dated 06.10.2017 (Annexure P-7), passed by learned Additional Sessions Judge, Sri Muktsar Sahib, on an application, filed on behalf of the petitioner, under Section 391 Cr.P.C., during pendency of his appeal in the said Court following his conviction for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. By the aforesaid application, the petitioner had sought for comparison of his signature and handwriting as also of the writings on the body of the disputed cheque (Exhibit C-1) dated 31.12.2011 from an official or any other Expert at his own expenses. The learned Court below, however, rejected the petitioner's prayer by observing, *inter alia*, as under:

“8. In the present case also reports of two experts is on file and strength of each report will be determined on its own intrinsic value and cannot depend on whether the person is freelance expert or an expert appointed by the Government and by examining a Government expert,

it would not enhance the quality of the evidence. Rather as already cited above this procedure, if adopted, it will be a bad precedent and there will be no end as then respondent will come up with his request. It is pertinent to mention here that the report of the handwriting expert is only a corroborative piece of evidence, which can be relied upon in aid of substantive evidence or discarded keeping in view the circumstances of the case, the reliability of the scientific and established reasoning given in the report to form the opinion and its credibility and veracity. Court cannot base its conclusion only on the report of the handwriting expert rather the court is to record the findings on appreciating the entire evidence available on record along with the report/reports of the handwriting expert.” (Emphasis supplied)

3. In assailing the impugned order, Ld. counsel for the petitioner has cited the decision of the Apex Court rendered in ***Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi), 2010 AIR (SC) 2352***, wherein it was held that the provisions of Section 391 Cr.P.C. have been enacted for empowerment of the appellate Court to see that justice is done between the prosecutor and the person being prosecuted and if the appellate Court finds that certain evidence is necessary to enable to give a correct and proper finding, it would be justified in taking action under Section 391 Cr.P.C. The relevant observations of ***Sidhartha Vashisht's*** case (supra), especially stressed on behalf of the petitioner, are set out below:

“47. Section 391 of the Code is another salutary provision which clothes the Courts with the power of effectively decide an appeal. Though Section 386 envisages the normal and ordinary manner and method of disposal of an appeal, yet it does not and

*cannot be said to exhaustively enumerate the modes by which alone the Court can deal with an appeal. Section 391 is one such exception to the ordinary rule and if the appellate Court considers additional evidence to be necessary, the provisions in Section 386 and Section 391 have to be harmoniously considered to enable the appeal to be considered and disposed of also in the light of the additional evidence as well. For this purpose it is open to the appellate Court to call for further evidence before the appeal is disposed of. The appellate Court can direct the taking up of further evidence in support of the prosecution; a fortiori it is open to the court to direct that the accused persons may also be given a chance of adducing further evidence. **Section 391 is in the nature of an exception to the general rule and the powers under it must also be exercised with great care, specially on behalf of the prosecution lest the admission of additional evidence for the prosecution operates in a manner prejudicial to the defence of the accused. The primary object of Section 391 is the prevention of guilty man's escape through some careless or ignorant proceedings before a Court or vindication of an innocent person wrongfully accused. Where the court through some carelessness or ignorance has omitted to record the circumstances essential to elucidation of truth, the exercise of powers under Section 391 is desirable.** (Emphasis added)*

48. The legislature intent in enacting Section 391 appears to be the empowerment of the appellate court to see that justice is done between the prosecutor and the persons prosecuted and if the appellate Court finds that certain evidence is necessary in order to enable it to give a correct and proper findings, it would be justified in taking action under Section 391.

49. There is no restriction in the wording of Section 391 either as to the nature of the evidence or that it is to be taken for the prosecution only or that the provisions of the Section are only to be invoked when formal proof for the prosecution is necessary. If the appellate Court thinks that it is necessary in the interest of justice to take additional evidence it shall do so. There is nothing in the provision limiting it to cases where there has been merely some formal defect. The matter is one of the discretion of the appellate Court. As re-iterated supra the ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the public prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the Court in the discharge of its judicial functions.”

4. There is no dispute regarding power of the appellate Court to invoke Section 391 Cr.P.C. At the same time, however, the highlighted observations of the Apex Court, in the above cited decision, also lay down that the same is to be resorted to only in exceptional circumstances. All the relevant powers under it must be exercised with great care, since the primary object of the same is *“prevention of guilty man's escape through some careless or ignorant proceedings before a Court or vindication of an innocent person wrongfully accused. Where the court through some carelessness or ignorance has omitted to record the circumstances essential to elucidation of truth, the exercise of powers under Section 391 Cr.P.C. is desirable.”*

5. In the present case, however, there is hardly anything on record to show any carelessness or ignorance on the part of the Trial Court inasmuch as any opportunity to the petitioner-accused to support

his case that the disputed cheque does not bear his signature or is not in his handwriting was denied. On the other hand, it is a matter of record that both the sides had examined Handwriting Experts in support of their respective contentions and conflicting opinions were expressed.

6. In such circumstances, it is for the Court to take a call as to which of the two opinions could be better relied upon after going through the relevant reports. The Ld. Trial Court decided the same in favour of the complainant. Even assuming that said decision of the trial Court might have been erroneous, the appellate Court is certainly possessed of the power to re-appreciate the matter once again in appeal, and it is not for the party to dictate the terms for coming to a proper finding regarding the disputed question by disbelieving the reports of both sides. In fine, if at all the learned appellate Court finds that it cannot come to any proper decision regarding the disputed handwriting and signature of the petitioner on account of conflicting Experts' reports, it would, on its own, have the scope to take recourse to refer all the documents concerned to any third or independent authority, but it is not for the petitioner-appellant to impose that situation upon the Court at this stage.

7. For the aforesaid reasons, no illegality is found in the impugned order passed by the learned Additional Sessions Judge, Sri Muktsar Sahib on account of which, the present petition is dismissed.

(SUDIP AHLUWALIA)
JUDGE

October 26, 2017

Ansari

Whether speaking/reasoned

Yes

Whether Reportable

Yes