

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-41935 of 2015

.....

Date of decision:24.3.2017

Harjinder Singh

.....Petitioner

v.

Dhanwant Singh

.....Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Kushagra Mahajan, Advocate for the petitioner.

Mr. H.S. Bedi, Advocate the respondent.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing/setting aside of the impugned order dated 8.12.2014 (Annexure-P.1) in Criminal Appeal No.187/32 of 2014, which has been passed illegally, arbitrarily and erroneously by learned Additional Sessions Judge, Amritsar and the same is liable to be quashed/set aside.

Notice of motion was issued in this case.

Mr. H.S. Bedi, learned Advocate has put in appearance on behalf of the respondent and contested this petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that an application had been filed under Section 391 Cr.P.C. by the appellant (petitioner herein) in the appeal titled

as “Harjinder Singh v. Dhanwant Singh” filed by him against the order of sentence dated 11.12.2013 passed by learned Judicial Magistrate Ist Class, Amritsar in complaint case No.840/11, vide which the accused/appellant had been convicted under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo rigorous imprisonment for one year and to pay compensation of ₹2 Lakhs to the respondent.

It has been stated in the application filed under Section 391 Cr.P.C. that the appellant and respondent were earlier partners and carrying on their business of sending persons abroad on education basis. The appellant and respondent opened Saving Bank Account in Oriental Bank of Commerce, Amritsar and they were having business concern with travel agency in the name of M/s R.S. Travels and Education Services in which Parminder Singh was a partner. One cheque was issued out of the joint account to M/s R.S. Travels. The said cheque was kept security, but the same has been misused. Therefore, for the purpose of establishing his defence, it was necessary to examine the concerned Clerk of Oriental Bank of Commerce to establish the factum regarding operation of joint account.

The learned Additional Sessions Judge (Ad hoc), Fast Track Court, Amritsar, vide order dated 8.12.2014 dismissed the application on the ground that no such plea was taken by the accused in the cross-examination of the respondent. No such prayer was earlier made by the appellant to prove the same in his defence evidence. Therefore, it cannot be said that no reasonable opportunity was given to the accused to lead defence evidence.

After hearing the learned counsel for the parties, I find that as

per Section 391 Cr.P.C. it is provided that 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. A perusal of the provisions of Section 391 Cr.P.C. shows that the only fact is to be seen whether the additional evidence is necessary or not. A perusal of the record shows that the accused wants to summon the Clerk of Oriental Bank of Commerce to establish the fact regarding the operation of joint account. It is a necessary evidence to prove the defence version of the accused. The application cannot be dismissed on the ground that such plea was not taken or put to the complainant in cross-examination. If this fact is shown from the Bank record it can be looked into. In my view, the evidence which the accused wants to produce before the appellate Court is necessary for the just decision of the case and to do substantial justice between the parties. Therefore, the findings given by the learned Additional Sessions Judge in the impugned order dated 8.12.2014 are not as per law and the same are set aside.

Finding merit in the preset petition, the same is allowed. The application filed under Section 319 Cr.P.C. is allowed. It is for the learned appellate Court as per Section 391 Cr.P.C. whether to record the evidence itself or direct it to be taken by the Magistrate as per law and then to decide the appeal as per law.

March 24, 2017.

(Inderjit Singh)
Judge

hsp

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