

CRR No. 3473 of 2013 (O&M)

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

CRR No. 3473 of 2013 (O&M)

Date of Decision: 15.03.2017

Shailesh Kumar Gupta

.....Petitioner

Vs

State of Haryana

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Kunal Dawar, Advocate,
for the petitioner.

Mr. Pradeep Prakash Chahar, D.A.G., Haryana.

RAJ MOHAN SINGH, J.(Oral)

Petitioner has assailed judgment dated 06.06.2013, passed by Sessions Judge, Palwal, vide which judgment dated 17.04.2007 passed by the Judicial Magistrate Ist Class, Palwal, was set aside, allowing the application under Section 391 Cr.P.C. and the case was remanded back to the trial Court for deciding the same afresh. Directions were also issued to give two effective opportunities to the prosecution to examine three witnesses and one opportunity to the accused-petitioner for rebuttal thereof.

Petitioner was tried by the Chief Judicial Magistrate

Ist Class, Palwal, in FIR No. 197 dated 20.07.2006 for the offences under Sections 406, 409, 420, 467, 468, 471, 120-B I.P.C. registered at Police Station Hodal. After the trial, the petitioner was convicted and sentenced for the offence under Section 420 I.P.C., whereas he was acquitted for the offences under Sections 409, 467, 468 and 471 I.P.C. The petitioner was sentenced to undergo rigorous imprisonment for one year along with fine of ₹ 5,000/- (Rupee Five Thousand only) under Section 420 I.P.C. along with default clause vide judgment/order dated 16.04.2007/17.04.2007.

During pendency of the trial, an application under Section 311 Cr.P.C. was moved by the prosecution seeking to summon S/Sh. O.P. Sharma, R.K. Sharma, Ravinder Aggarwal and Sita Ram Sharma. The application was allowed by the Judicial Magistrate Ist Class, Palwal on 09.03.2007 and the prosecution was directed to summon these witnesses for their examination. In pursuance of the said order, statement of Assistant Public Prosecutor was recorded by the Magistrate on 15.03.2007. Witnesses namely O.P. Sharma, Vigilance Officer and Ravinder Aggarwal, Additional G.M. F & A, were left as unnecessary witnesses and the prosecution evidence was closed on making the statement by the A.P.P. R.K. Sharma and Sita Ram Sharma were examined. Trial Court while recording

conviction also considered the statements of aforesaid witnesses.

Both the parties went in appeal before the Lower Appellate Court. In the appeal filed by the State, an application under Section 391 Cr.P.C. was also moved seeking to lead further evidence, i.e. re-examination of R.K. Sharma, Additional G.M. F&A, who had already been examined during the main proceedings and witnesses namely O.P. Sharma and Ravinder Aggarwal, who were given up by the A.P.P. on 15.03.2007. The application under Section 391 Cr.P.C. was dismissed by the Additional Sessions Judge vide order dated 26.03.2008 on the premise that R.K. Sharma, Additional G.M. F&A, had already been examined during the trial and witnesses namely O.P. Sharma and Ravinder Aggarwal were specifically given up by A.P.P. on 15.03.2007 being unnecessary.

Against order dated 26.03.2008 passed by the Additional Sessions Judge, Faridabad, criminal revision No. 1118 of 2008 came to be filed by the State of Haryana in the High Court. In the aforesaid revision petition, the High Court allowed the revision petition thereby, setting aside order dated 26.03.2008. It was also ordered that it would be just and expedient to quash the impugned order and direct the Appellate Court to decide the application moved by the prosecution afresh

by examining the material aspect as to whether the additional evidence, now sought to be led was necessary for just decision of the case. The Appellate Court was directed to pass a fresh order in accordance with law. Thereafter, the Lower Appellate Court passed the impugned order thereby, accepting the application under Section 391 Cr.P.C. in toto. Witnesses namely O.P. Sharma, Vigilance Officer, and Ravinder Aggarwal, Additional G.M. F&A, were treated to be material witnesses to prove the incriminating case against the accused. The Lower Appellate Court remanded the case back to the trial Court with a direction that the trial Court shall give two effective opportunities to the prosecution to examine the above three witnesses and one opportunity to the accused for rebuttal.

Judgment and order of the trial Court were accordingly set aside, while remanding the case to the trial Court.

The petitioner is aggrieved of the order of remand as a whole.

Learned counsel for the petitioner on the strength of **Bhanwar Singh Vs. State of Rajasthan, 2011 (1) Criminal Law Reporter, 864**, contended that while allowing the additional evidence, there was no necessity for the Appellate Court to quash the entire judgment and order of the trial Court. The

Appellate Court should have waited for the additional evidence to be concluded by the trial Court or should have proceeded itself to record the additional evidence. In both the eventualities, the judgment and order of the trial Court were not required to be set aside. Similar proposition was involved in **Tokh Ram Vs. State through Delhi Administration, 1983 (1) R.C.R. (Criminal) 154.**

However, learned State counsel opposed the same by arguing that once the additional evidence was allowed by the Appellate Court, the trial Court was justified in recording the evidence and thereafter, making the decision afresh on merits.

Having considered the submissions made by both sides, I am of the considered view that extent and scope of Section 391 Cr.P.C. cannot be interpreted in the manner as suggested by the Lower Appellate Court. The Lower Appellate Court could have acted within the scope of Section 391 Cr.P.C. The Appellate Court ought to have taken the additional evidence by itself or could have remanded the case only for a limited purpose of getting a report of the additional evidence to be taken by the trial Court. In both the eventualities, judgment and order of the trial Court were not required to be set aside, particularly when the accused was convicted after appraisal of material/evidence produced by the prosecution for the offence

under Section 420 I.P.C. by the trial Court. Relevancy of the additional evidence or otherwise could have been answered by the Court, taking additional evidence, i.e. either by the trial Court or the Lower Appellate Court in accordance with law.

In view of the aforesaid, impugned order is hereby set aside, however, the case is again remanded to the Lower Appellate Court to decide the application afresh with a liberty either to record additional evidence itself or remand the case to the trial Court, for calling a report on additional evidence.

Disposed of.

15.03.2017

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No