

Criminal Revision No.3097 of 2014

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

Criminal Revision No.3097 of 2014

Reserved on: 17.07.2017

Pronounced on: 27.07.2017

Harpreet Singh

....Petitioner

Versus

Pawan Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Argued by: -

Ms. Rakhi Sharma, Advocate, for the petitioner.

Mr. Upender Prashar, Advocate, for

Mr. Rakesh Sharma, Advocate, for the respondent.

RAMENDRA JAIN, J.

This order shall dispose of Criminal Revision Nos.3097 and 2984 of 2014 as common questions of law and facts are involved.

For the sake of brevity, facts are being extracted from Criminal Revision No.3097 of 2014.

Prayer in the instant revision has been made for setting aside the order dated 17.07.2014 passed by First Appellate Court, Amritsar, allowing the application of the respondent-accused under Section 391 Cr.P.C. for leading additional evidence, during the pendency of the criminal appeal.

Briefly stated, the trial Court while accepting the complaint of the petitioner under Section 138 of the Negotiable Instruments Act (in short 'the N.I. Act'), held the respondent guilty and convicted him for two years rigorous imprisonment, with fine of ₹ 1,000/- and in default of payment of

fine to further undergo simple imprisonment for a period of one month, vide judgment of conviction and order of sentence dated 15.05.2013.

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Being aggrieved, respondent preferred an appeal and during its pendency, moved an application for leading additional evidence, which has been allowed vide impugned order dated 17.07.2014.

Learned counsel for the petitioner contended that the respondent had moved application to lead additional evidence at the appellate stage to prove that the petitioner was habitual of filing frivolous complaints under Section 138 of the N.I. Act inasmuch as earlier also he had filed similar type of complaints against various persons involving amount of ₹ 24 lakh, which was beyond the reach of the petitioner. Since the aforesaid fact had already been admitted by the petitioner in his cross-examination, therefore, the First Appellate Court has wrongly and illegally allowed the application of the respondent, because the fact which was already on the record was not required to be proved again by way of additional evidence. She also contended that even otherwise the respondent since had not fulfilled the mandatory requirements to lead additional evidence, therefore, his application was liable to be rejected.

On the other hand, learned counsel for the respondent, vehemently opposing the above arguments of learned counsel for the petitioner, pleaded the legality and validity of the impugned order. He contended that the evidence sought to be produced by way of additional evidence is in the shape of certified copies of judgments passed against the petitioner and have material bearing on the merits of the case, therefore, the application of the respondent for additional evidence has rightly been allowed as the same is not going to change the nature of the litigation. In support of his contentions, learned counsel has placed reliance upon ***Zahira Habibulla H.***

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Herald 3468 and Rameshbhai Jayendrabhai Modi v. State of Gujarat, 2013 ACD 563.

I have given anxious consideration to the submissions made by learned counsel for both the parties.

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 is akin to Order 41 Rule 27 of the Civil Procedure Code, which lays down following conditions to seek permission

for leading additional evidence: -

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- “(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 para 6 of the application under Section 391 Cr.P.C., the respondent had pleaded that he was not well-conversant with the technicalities of law and even his earlier counsel also did not give him proper advice and as such due to the negligence of his previous counsel, respondent could not produce the certified copies of the complaints as well as copy of the FIR. However, the respondent cannot be permitted to take the said pleas 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 on the ground of lack of knowledge and lack of proper advice.

In the instant case, the complainant as PW1 in his cross-examination to the queries of learned counsel for the respondent has testified or has made admission that he was doing job in a bank and that he had not mentioned the cheque amount mentioned in the complaint in his books of accounts and that he had also filed complaints against Lakhwinder Singh and one or two more persons.

The above referred cross-examination of the complainant shows that the evidence now sought to be produced by way of additional evidence regarding filing of similar complaints under Section 138 of the N.I. Act by the complainant against some other persons was well within the knowledge

of the respondent, but he did not make any effort to lead any evidence to that effect before the trial Court itself at the time of his defence evidence.

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Moreso, the First Appellate Court in the impugned order has also observed as under: -

“.....Complainant has not denied the filing of the complaints against different persons, whereby total amount allegedly advanced by him to different persons comes to Rs.24,00,000/- approximately and has further not denied the fact that he is serving as class IV employee in bank.”

Perusal of the impugned judgment of conviction dated 15.05.2013 passed by the trial Court shows that though the respondent-applicant was afforded numerous opportunities to lead his evidence in defence, whatsoever he desired, but he did not produce any of the documents, sought to be produced at the appellate stage and therefore, in the considered opinion of this Court, the First Appellate Court should not have allowed the respondent to produce the same to fill up the lacuna more particularly, when the respondent did not fulfil the necessary conditions enumerated above to lead additional evidence. The First Appellate Court has even not given any reasoning muchless sound for allowing the application of the respondent-applicant under Section 391 Cr.P.C.

In ***Zahira Habibulla's*** case (supra), the Hon'ble Supreme Court has held that trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty.

There is no dispute with the above proposition of law, but it is pertinent to mention here that the production of copies of complaints, judgments and the FIR so to be lodged by the respondent by way of additional evidence has no material bearing on the facts of the instant case

inasmuch as each case has to be decided on its own merits. The judgments of other cases may not influence while deciding a particular case and cannot

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be a guiding factor as each case has its own peculiar facts. Therefore, reliance of the learned counsel for the respondent on **Zahira Habibulla's** case (supra) is mis-conceived.

In the case of **Naval Kishore** (supra) relied upon by learned counsel for the respondent, petitioner was allowed to lead additional evidence at the appellate stage and in **Rameshbhai Jayendrabhai Modi's** case (supra) it has been held that ultimate criteria for invoking provision of Section 391 Cr.P.C. is to give fair opportunity to the accused in a trial and to see that hands of justice are properly served.

There is not dispute with the above proposition of law, however, perusal of impugned judgment shows that despite availing two opportunities, respondent-applicant failed to lead his additional evidence and, thus, it can safely be presumed that he wants to delay the decision in appeal.

In view of the discussion above, revision petitions are allowed and the impugned order 17.07.2014 passed by the First Appellate Court is hereby set aside.

July 27, 2017
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No