

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

(i) CRR No.3551 of 2016 (O&M)

Dr.Kamla Singh

...Petitioner

VERSUS

State of Haryana and another

...Respondents

(ii) CRR No.4147 of 2016 (O&M)

State of Haryana

...Petitioner

VERSUS

Sandeep Sharma

...Respondent

Date of Decision: November 06, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sunil Panwar, Advocate
for the petitioner (in CRR No.3551 of 2016).

Mr.Kuldeep Sharma, Deputy Advocate General, Haryana
for the petitioner-State (in CRR No.4147 of 2016) and
for the respondent-State (in CRR No.3551 of 2016).

Mr.Brijender Kaushik, Advocate
for respondent No.2 (in CRR No.3551 of 2016) and
for the respondent (in CRR No.4147 of 2016).

INDERJIT SINGH, J.

This order shall dispose of above-mentioned two connected
revisions as the point for determination in both the cases is the same.

Though, these revision petitions are regarding separate impugned orders passed by learned lower Appellate Court on the application filed by the complainant and application filed by the State but in both the applications, same evidence is stated to be produced. Therefore, both these revision petitions are taken up together.

The above-mentioned revision petitions have been filed by petitioners, challenging the impugned orders dated 07.06.2016 and 20.08.2016 passed by learned Addl. Sessions Judge, Panchkula, vide which the prosecution evidence was closed by order and order dated 16.02.2017 vide which application filed by the petitioners under Sections 391 and 311 Cr.P.C. were dismissed.

Notice of motion was issued. Learned counsel for private respondent, appeared and contested the petitions.

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

From the record, I find that during the pendency of the appeal before Court of Session, applications were filed under Sections 391 and 311 Cr.P.C. by the State as well as by the complainant, almost on the similar facts to summon same evidence. The facts are taken from CRR No.4147 of 2016.

It is stated in the application by the prosecution that instant appeal has been filed against the impugned judgment of acquittal passed by the lower Court. The applicant had no knowledge about some additional evidence and if this evidence is to be adduced before the trial Court, the fate could be otherwise. Due to change of circumstances after the passing of judgment and even after tendering of additional evidence on 11.02.2016,

during pendency of the appeal some important evidence has come in picture and if this evidence are appreciated or considered by the Court, there will be just and proper decision of the case. This evidence has come to the knowledge of the prosecution through Dr.Kamla Singh, the then CMO Panchkula, who has procured this information from Medical Council of India. It is also in the application that the allegations in the FIR against respondent Sandeep Sharma S/o Mange Ram Sharma are that he represented himself as a doctor. However, he was not possessing any MBBS degree and wrongly and illegally took financial aid from the office of Civil Surgeon, Panchkula under the Blindness Control Programme and on the basis of false and forged degree by committing fraud on the department. Sandeep Sharma produced one copy of Medical Registration Certificate before lower Court vide Ex. D1 and has again committed perjury by falsely representing himself as a qualified doctor and has showed that he was possessing MBBS degree. It is stated in the application that now in this manner, the prosecution intends to produce the following witnesses to produce following documents:-

(i) Secretary/concerned official of Medical Council of India, Pocket-14 Sector-8, Dwarka, New Delhi 110077 along with the following original record:-

(a) The original Indian Medical Register of the year 1999 containing Medical Registration No. 19687.

(b) The original gazette book of notification of Indian Medical Register of the year 1999 containing Medical Registration No. 19687.

(c) Original/Attested copies of all the Medical Registration Certificates (whether original or duplicate) issued by the Medical Council of India in relation to Medical Registration No. 19687.

(d) Original copies of all complaints/letters/inquiry in respect of Medical Registration No. 19687. (e) Original copy of report/letter/inquiry received from CBI in relation to Medical Registration No. 19687.

(II) Registrar/Authorized concerned official of Haryana Medical Council Panchkula, Sector-6, Panchkula along with the following record:-

(a) Original record pertaining to the Medical Registration No. 19687 in the name of Dr.Sandeep Sharma S/o Sh.Mahesh Bal Sharma, resident of H. No. 53, Parkash Vihar Colony, Palwal, District Palwal and all the certificates/authorization issued by the Haryana Medical Council, Panchkula to Dr.Sandeep Sharma.

(III) Civil Surgeon, Palwal/concerned authorized official of Civil Surgeon, Palwal along with the original record pertaining to Dr.Sandeep Sharma S/o Sh.Mahesh Bal Sharma, resident of H. No. 53, Parkash Vihar Colony, Palwal, District Palwal and along with all the certificates, affidavits, permission etc. submitted by Dr.Sandeep Sharma in the office of Civil Surgeon, Palwal.

(IV) Dr.Sandeep Sharma S/o Sh.Mahesh Bal Sharma, resident of H. No. 53, Parkash Vihar Colony, Palwal, District Palwal and along with all his original certificates from Medical Council of India.

At the time of arguments, learned State counsel and learned counsel for the petitioner-complainant argued that petitioners could not produce above evidence because the decree Ex.D1, first time, was produced by the accused in his defence under Section 313 Cr.P.C. This document was not in existence or ever produced by the accused at the time of investigation. Therefore, no investigation could be carried out qua the degree Ex.D1 nor there was any time to get collected all this evidence which the prosecution wants to produce now as additional evidence due to shortage of time and late stage of the trial. It is also argued by learned State counsel that degree Ex.D1 has been issued to another Dr.Sandeep Sharma s/o Sh.Mahesh Bal Sharma, which has been used by respondent Sandeep Sharma by committing forgery in the present case to show that he is a qualified MBBC doctor. Learned State counsel further argued that in bail application before this Court, the case of the accused was that he is 10+2 pass and is not a MBBS

Appellate Court as additional evidence.

On the other hand, learned counsel for the respondent Sandeep Sharma argued that the applications in question are second and third applications, which cannot be allowed and are not maintainable.

After hearing learned counsel for the parties as well as learned State counsel, I find that, first of all, there is no bar that second or third application cannot be filed for leading additional evidence. Second or third application under Sections 311 and 391 Cr.P.C. can be filed on coming to know some new facts. In no way, the application for leading additional evidence under Section 391 Cr.P.C. in the appeal can be held as it has been filed at later stage. The FIR was of 2008 and the trial was decided in the year 2015. When, at the close of the prosecution evidence, the accused was examined under Section 313 Cr.P.C., then accused produced document Ex.D1 i.e. degree, which is stated to have been issued to some other doctor of similar name, which the prosecution alleges, has been used by the accused by committing forgery. The prosecution wants to get examined that doctor i.e. Dr.Sandeep Sharma s/o Sh.Mahesh Bal Sharma also to prove this fact.

Furthermore, record of the Medical Council of India, original Indian Medical Register, gazette notification etc. are also required to prove this fact. The evidence, which the prosecution and complainant want to place on record in the appeal, is a material evidence and necessary for the just decision of the case and to do substantial justice.

In view of the above discussion, I find that the impugned orders dated 07.06.2016 and 20.08.2016 passed by learned Addl. Sessions Judge,

Panchkula, are not as per law and the same are set aside.

Therefore, finding merit in both the revision petitions, the same are allowed. The applications filed by the State as well as by the complainant under Sections 391 and 311 Cr.P.C. for leading additional evidence are allowed.

November 06, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No