

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

CRR-3909-2017

Date of decision:- 30.11.2017

Pawan

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sarfraj Hussain, Advocate
for the petitioner.

H.S. MADAAN, J.

This revision petition is directed against the order dated 11.9.2017 passed by the Court of learned Additional Sessions Judge, Faridabad vide which application moved under Section 391 Cr.P.C. by the the applicant/victim was dismissed.

Briefly stated, facts of the case are that accused Rajpal, Sandeep and Rampal faced trial before the Court of learned Chief Judicial Magistrate, Faridabad, who vide judgment dated 12.5.2014 convicted them and vide order dated 14.5.2014, they were sentenced as follows:

Sandeep

Under Section	Sentence
324 IPC	Rigorous imprisonment for two years and fine of Rs.500/- and in default of payment of fine further rigorous imprisonment for one month.

Rajpal

Under Section	Sentence
323 IPC	Rigorous imprisonment for six months.
325 IPC	Rigorous imprisonment for two years and fine of Rs.1,000/- and in default of payment of fine further rigorous imprisonment for two months.

Rampal

Under Section	Sentence
323 IPC	Rigorous imprisonment for six months.

All the sentenced were ordered to run concurrently.

Feeling aggrieved, they have preferred an appeal. During the pendency of the appeal, the applicant-complainant Pawan had moved an application under Section 391 Cr.P.C. for permission to summon PW1 Dr. Pankaj Bhatia contending that learned Chief Judicial Magistrate, Faridabad held accused Rampal guilty under Section 323 IPC, whereas Rajpal under Sections 323 and 325 IPC and Sandeep under Section 324 IPC; that the investigating agency had sent the appellants accused Rajpal and Sandeep only to face trial, whereas Rampal was summoned as additional accused under Section 319 Cr.P.C., when statements of some witnesses including PW1 Dr.Pankaj Bhatia had already been recorded; that after summoning of Rampal, all the prosecution witnesses were examined afresh, out of them PW1 Dr.Pankaj Bhatia, who had given x-ray report could not be re-examined with the result his testimony regarding the fracture having been noticed was not read into evidence against accused Rampal, as such, he was held guilty under Section 323 IPC and

not under Section 325 IPC; that as a matter of fact summons for service of PW1 Dr.Pankaj Bhatia had not been issued and then prosecution evidence was closed by Court order. Therefore, for just decision of the case, it is necessary to recall PW1 Dr.Pankaj Bhatia by way of additional evidence.

That application was opposed by appellants - accused on the ground that the application was not maintainable and had been filed simply to prolong the proceedings; that PW1 Dr.Pankaj Bhatia had already been examined thoroughly before summoning of appellant accused; that the prosecution was afforded adequate opportunities to lead evidence but State counsel did not make any attempt to re-examine Dr.Pankaj Bhatia, therefore evidence of the prosecution was closed vide Court order.

Learned lower Appellate Court had dismissed the application observing that charge was framed in this case on 19.10.2013; that the prosecution had availed of numerous opportunities to lead evidence, ultimately the same was closed on 5.2.2014 by Court order; that thereafter statements of accused were recorded and the case was decided vide judgment dated 12.5.2014; that neither the prosecution nor the complainant had ever challenged order dated 5.2.2014 and had rather filed the application quite belatedly at the stage of appeal; that the applicant victim had ample opportunity to examine concerned doctor but failed to do so. Authorities *AIR 2001 Supreme Court 2120, Rambhau and another Versus State of Maharashtra* and *Rajvinder Singh Versus State of Haryana, 2016 (1) RCR(Criminal)170(SC)* have been relied upon.

Learned lower Appellate Court further referred to citation *Harjit Singh*

Versus The State of Punjab and others, AIR 2002 SC 3040 by Hon'ble

Apex Court, wherein it was observed as under:

“Powers under Section 391 Cr.P.C. are to be exercised and such testimony could be accepted only if the appellate court is satisfied for reasons on record that such a course should be adopted. It is also observed in this case that the necessity for additional evidence arises when the court feels that some evidence which ought to have been before it is not there or that some evidence has been left out or erroneously brought in none of these considerations would arise in the present case. There is, thus, no merit in the petition. The same is accordingly dismissed.”

As such, the application was dismissed.

Being dissatisfied, the complainant has filed the present revision petition.

I have heard the learned counsel for the petitioner besides going through the record.

Section 391 Cr.P.C. deals with the situation where the Appellate Court may take further evidence or direct it to be taken. For ready reference, the provision is reproduced as under:

391. Appellate Court may take further evidence or direct it to be taken.

(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.*

However, in the present case it has been noticed by the lower Appellate Court that the prosecution had availed numerous opportunities to lead evidence but failed to do so, as such the evidence of prosecution was closed by Court order. Interestingly, that order was neither challenged by prosecution nor by complainant, therefore, it has become final. Furthermore, if the application is allowed that would result in *de novo* trial extending the proceedings further which is uncalled for.

I do not find anything illegal or wrong with the impugned order. There is no ground for interference with such order while exercising revisional jurisdiction by this Court. Resultantly, the revision petition stands dismissed.

30.11.2017
Brij

(H.S.MADAAN)
JUDGE

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