

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

CRM-M-34370-2016

Date of decision:-6.4.2018

Rakesh Sharma

...Petitioner

Versus

Anil Sharma

...Respondent

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

Present : Mr.Rajesh Bansal, Advocate
for the petitioner.

None for the respondent.

H.S. MADAAN, J.

Petitioner Rakesh Sharma, an accused in a complaint case under Section 138 of Negotiable Instruments Act, 1881 filed by Anil Sharma (respondent-complainant) against him faced trial, which ended in his conviction by the trial Court and against, which he had filed an appeal to the Court of Sessions, is feeling aggrieved by order dated 9.9.2016 passed by learned Additional Sessions Judge, Panipat vide which an application under Section 391 Cr.P.C. filed by him for leading additional evidence has been dismissed.

Briefly states facts of the case are that the petitioner had filed an application under Section 391 Cr.P.C. before learned Additional Sessions Judge, Panipat hearing his appeal, for leading additional evidence that the trial Court instead of drawing adverse inference against respondent – complainant for not proving his case beyond shadow of reasonable doubt had shifted the burden towards the petitioner inasmuch as observing in page No.9 of the judgment that **“The things would have been different if the accused had produced and proved the statement of account of the complainant till 24.7.2009 on which date the loan was advance to the accused by the complainant. So from Ex.D1 no adverse inference can be drawn against the complainant being incomplete statement of account of the complainant.”**

Therefore, he be permitted to lead additional evidence in that regard by summoning concerned bank official from The Panipat Urban Coop. Bank Ltd., G.T. Road, Panipat with statement of account of complainant Anil Sharma from 1.4.2009 to 31.12.2009.

Notice of the petition was issued to the respondent – complainant, who initially put in appearance through counsel but later on did not appear.

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

The reasoning given by learned Additional Sessions Judge, Panipat while dismissing the application is contained in para No.6 of the order, which for ready reference is reproduced as under:

The appellant-accused took the plea in his defence

that the respondent-complainant had no capacity to lend a sum of Rs.5 lacs to him. Therefore, certainly burden lies upon the appellant-accused to prove his assertions, particularly when he admitted his signatures on the cheque. After the observations made by learned trial Court in its judgment, appellant-accused cannot be permitted to fill up the lacuna. He had ample opportunity to lead evidence in his defence before learned trial Court. The evidence sought to be led was very much in the reach and knowledge of the appellant-accused but at that time, no such effort was made by him. Thus, now he cannot be permitted to produce additional evidence which was available to him during the trial. Moreover, the additional evidence sought to be adduced is not necessary for the just decision of the case. Thus, finding no merit in the application in hand, the same stands dismissed.

I find the impugned order to be well reasoned one and not suffering from any illegality or infirmity.

Under Section 391 Cr.P.C., the Appellate Court if it thinks additional evidence to be necessary shall record its reason and may either such evidence itself or direct it to be taken by the Magistrate i.e. subjective satisfaction of the Appellate Court. This is completely the discretion of the Appellate Court to take additional evidence, if it finds that the same to be necessary. This can be so done by recording reasons and not in a casual manner. The appellant cannot insist that the additional evidence be taken by the Appellate Court when the Appellate Court does not find the same to be necessary to be brought on record for proper and complete adjudication of the controversy.

The petition being without merit stands dismissed accordingly.

6.4.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No