

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

124

CRM-M No.3714 2018

Date of Decision: February 14th, 2018

Satish Kumar

...Petitioner

Versus

Raj Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Miss Jony Bansal, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the order dated 06.11.2017 passed by Additional Sessions Judge, Faridabad, whereby the application for additional evidence filed under Section 391 Cr.P.C. by the petitioner, who is an appellant before the Court below where his appeal is pending against the judgment dated 16.11.2016 whereby the petitioner was convicted under Section 138 of the Negotiable Instruments Act and the order of sentence dated 21.11.2016, has been ordered to be taken up along with the main appeal at the time of final arguments.

It is the contention of learned counsel for the petitioner that an application for additional evidence under Section 391 Cr.P.C. was filed by the petitioner before the Appellate Court which application has been ordered to be taken up along with the main appeal at the time of final arguments. Counsel contends that had the application under Section 391 Cr.P.C. been considered and decided first and rejected, the petitioner would be able to avail the remedy to challenge the same before this Court. Because of the application being ordered to be heard along with the main appeal, the petitioner would lose that opportunity and chance to challenge the said order and, therefore, prejudice would be caused to the petitioner.

She, therefore, contends that the present petition be allowed and the learned Appellate Court be directed to consider and decide the application under Section 391 Cr.P.C. preferred by the petitioner for additional evidence prior to taking up the main appeal for arguments.

Having considered the submissions made by learned counsel for the petitioner and on going through the provisions of Section 391 Cr.P.C., I find that there is no mandate as such for deciding the application at an earlier date than the one which is fixed by the Appellate Court for final disposal of the appeal. That discretion has been given to the Appellate Court to be exercised in the given facts and circumstances of each case. The discretion as has been exercised by the Appellate Court cannot be faulted with merely because the petitioner apprehends that the application for leading additional evidence preferred by him under Section 391 Cr.P.C. would not be accepted. In any case, the Appellate Court has directed the application under Section 391 Cr.P.C. to be considered and decided at the time when the appeal is listed for arguments. Obviously, in case the Appellate Court comes to a conclusion that the application for additional evidence is to be allowed as the evidence which is being sought to be produced is required for just and proper decision of the case, the Court would take further appropriate steps. This approach, in any case of the Appellate Court, appears to be fully justified keeping in view the fact that when the case is open for arguments, Court would be aware of all the details and evidence led by the parties before it.

It goes without saying that the application for additional evidence has to be considered and decided prior to the final appeal being decided or along with the main appeal itself.

The contention of the counsel for the petitioner, therefore, cannot be accepted.

The order dated 06.11.2017 as passed by the learned Additional Sessions Judge, Faridabad, cannot be faulted with.

The present petition being devoid of merit, therefore, stands dismissed.

February 14th, 2018
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No