

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

**CRR-4273-2015 (O&M)
Date of Decision: 9.7.2018**

Tara Singh through his LRs

.....PETITIONER(s).

VERSUS

State of Punjab and another

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Amaninder Singh Sekhon, Advocate
for the petitioners.
Mr. Saurav Khurana, DAG, Punjab.
Mr. Bhavyadeep Walia, Advocate,
for respondent No.2.

RAJ SHEKHAR ATTRI, J.(Oral)

Order dated 4.8.2015 passed by learned Additional Sessions Judge, Bathinda, by virtue of which, application under Section 391 of Code of Criminal Procedure has been assailed before this Court.

The respondents-accused were facing trial for offences under Sections 420, 468, 471, 474 Indian Penal Code. However, they were acquitted by learned Chief Judicial Magistrate vide judgment dated 18.3.2014.

Said order has been assailed before learned Sessions Judge, Bathinda by filing an appeal. However, during the pendency of the appeal, an application was filed under Section 391 Cr.P.C. for giving permission to adduce additional evidence for production and proof of original affidavit of Tara Singh complainant from the office of District Magistrate, Bathinda and also summoning the original account opening

form of Tara Singh (Mark X) which is already placed on record. It has been pleaded in para 3 to 5 of the application as under : -

“3. That the present case of forgery is on the basis of false and forged affidavit which is prepared by the respondent/accused, the photocopy of the same is attached with the file but original affidavit is in the office of District Magistrate, Bathinda. At the time of prosecution evidence inadvertently the above said original record was not properly proved on the file.

4. That the applicant/appellant wants to prove the above said original record of the file and wants to summon the above said record and witness, which is very much essential to decide the case and for the interest of justice.

5. That equity and justice also demands that the giving the permission to adduce the additional evidence to produce and prove the original affidavit. Photo copy of that already on the file, from the office of District Magistrate, Bathinda and to summon the expert to prove his report of Ex.PW-2/F already on the file and also summoning the original account opening form of Tara Singh with the Faridkot Central Cooperative Bank Limited, Jaito, Account No.1150, Mark-X which is already on the file, for the just decision of the case and in the interest of justice.”

Said application was contested basically on the ground that the above said documents have been filed after inordinate delay.

After hearing the counsel for the parties, said application was dismissed.

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

Every criminal trial is a process of discovery of truth. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the reality and to advance the cause of justice.

In **Ram Chander v. State of Haryana**, (1981) 3 SCC 191, while speaking about the role of a judge in a criminal trial, Hon'ble Supreme Court observed that if a criminal court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth.

Hon'ble Apex Court in **Maneka Sanjay Gandhi and another v. Rani Jethmalani**, (1979) 4 SCC 167, though in a different context, observed:-

“Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hyperscrahivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to

exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate when the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.”

Hon'ble Supreme Court in **Zahira Habibullah H. Sheikh and another v. State of Gujarat and others**, 2004 (2) RCR (Criminal) 836 has made the following observations:-

“The principles of rule of law and due process are closely linked with human rights protection. Such rights can be protected effectively when a citizen has recourse to the Courts of law. It has to be unmistakably understood that a trial which is primarily aimed at ascertaining the truth has to be fair to all concerned. There can be no analytical, all comprehensive or exhaustive definition of the concept of a fair trial, and it may have to be determined in seemingly infinite variety of actual situations with the ultimate object in mind viz. whether something that was done or said either before or at the trial deprived the quality of fairness to a degree where a miscarriage of justice has resulted. It will not be correct to say that it is only the accused who must be

fairly dealt with. That would be turning a Nelson's eye to the needs of the society at large and the victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Fair trial obviously would mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial.”

Section 391 of the Code of Criminal Procedure invests the appellate court with the discretion of recording additional evidence if it thinks additional evidence to be necessary. The test for determination is the aspect of necessity which presupposes that a fair decision of the appeal would, as of obligation, require such additional evidence. To the mind of this Court, the objection raised by the defence that the reception of additional evidence would offend the doctrine of finality is without substance to the extent that the law presupposes a situation where an essential requirement has not been complied with, and obviously instead of providing for a de novo trial, it permits such a corrective step. On the aspect of the alleged prejudice, the objection is again devoid of merit because the defence is permitted to cross-examine the witnesses as it

would have done before the trial Court and this Court has also taken the necessary precaution of putting the material elicited to the respondent-accused and recorded his further statement under Section 313 of the Code of Criminal Procedure at which time it is open to him to explain circumstances or material appearing against him. The procedure under Section 391 of the Code of Criminal Procedure contemplated a situation where an appeal court may record additional evidence provided it is satisfied that such evidence is necessary.

In the case in hand, acquittal was based, *inter alia*, on various grounds and one of them is that the said affidavit Ex.PW2/E is not proved. Similarly, it has been observed that Mark X is also not proved. To the mind of this Court, learned Additional Sessions Judge has declined opportunity to the State to prove said document Ex.PW2/E. This Court is of the considered opinion that the State be allowed to lead additional evidence. It will not amount to filling up the lacuna nor it caused any prejudice to the accused as the documents are part of the final report.

Keeping in view the above facts and circumstances, the present petition is allowed and the impugned order dated 4.8.2015 is set aside. Consequently, application under Section 391 Cr.P.C. is hereby allowed.

(RAJ SHEKHAR ATTRI)
JUDGE

July 9, 2018
Paritosh Kumar

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>