

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 4294 of 2015 (O&M)

Date of Decision: 11.10.2018

Asha Rani

...Petitioner

VERSUS

Gurjit Kaur

...Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. A.S. Gill, Advocate
for the petitioner.

Mr. Gurcharan Dass, Advocate
for the respondent.

SURINDER GUPTA, J.

This is revision against order dated 16.10.2015 passed by Additional Sessions Judge, Jalandhar whereby application filed by respondent-Gurjit Kaur seeking permission to lead additional evidence as per provisions of Section 391 Cr.P.C. was allowed.

2. Petitioner-Asha Rani filed a complaint under Section 138 of the Negotiable Instruments Act against respondent-Gurjit Kaur for dishonour of cheque of ₹6 lakhs bearing no. 030253 dated 05.10.2004. After trial learned Magistrate, Jalandhar, convicted and sentenced respondent-Gurjit Kaur to undergo rigorous imprisonment for two years and to pay a fine of ₹5000/- and in default of payment of fine to further undergo rigorous imprisonment for one month. She filed appeal which is pending before the Additional Sessions Judge, Jalandhar.

3. During pendency of the appeal, respondent-Gurjit Kaur moved application under Section 391 Cr.P.C. seeking permission to lead additional evidence wherein she stated that her husband, who was working in Texla

Company, Ludhiana met with an accident and got compensation. She contacted Charanjit Singh, resident of H. No. 395, LIG Flats, Phase-I, Dugri, Ludhiana for investment of ₹5,50,000/-. He paid interest on this amount to her for sometime and thereafter, stopped making any payment. She then contacted one Ravinder Singh son of Dhadda Singh, who asked Charanjit Singh to return the money of Gurjit Kaur but Charanjit Singh did not agree. Ravinder Singh introduced her with his brother Gurcharan Singh Begol, who is a practicing advocate at Jalandhar. The said advocate got registered an FIR against Charanjit Singh. During the course of proceedings that advocate received ₹4,50,000/- from respondent-Gurjit Kaur and also obtained her signatures on blank cheque on the pretext of getting comparison with cheque given to Charanjit Singh. He also demanded more money from her which she refused to pay and demanded back her money and blank signed cheque. Said advocate handed over her cheque to Asha Rani (petitioner), his cousin. In order to blackmail her and at the instance of Gurcharan Singh Begol and his brother, namely, Ravinder Singh, petitioner-Asha Rani filed a false complaint using that cheque. She (Asha Rani) had also moved complaint against respondent-Gurjit Kaur on which enquiry was conducted by Sh. Navjot Singh Mahal, Deputy Superintendent of Police, Phagwara. Petitioner-Asha Rani in that enquiry admitted her relations with Gurcharan Singh Begol, Advocate and his brother. Charanjit Singh was convicted for the forgery committed by him in case bearing FIR No. 262 dated 30.10.2003. In reply to notice issued by petitioner-Asha Rani and in her statement under Section 313 Cr.P.C., Gurjit Kaur had taken the same defence. The production of record of case titled as '*State vs. Charanjit Kaur etc.*' (FIR No. 262 dated 30.10.2003, registered at Police Station Model

Town, Ludhiana) is necessary to prove before the Court that : (i) Gurcharan Singh Begol, Advocate was counsel for Gurjit Kaur in case titled as '*State vs. Charanjit Singh etc.*' by producing certified copy of power of attorney in his favour; (ii) Asha Rani is cousin (daughter of *bua*) of Gurcharan Singh Begol – a fact admitted by complainant in her statement to police; and (iii) copy of judgment passed in that case. The above evidence could not be produced as respondent-Gurjit Kaur was suffering from cancer and her radiation therapy was in process in Mohan Dei Oswal Cancer Treatment and Research Foundation, Ludhiana.

4. The application was opposed by the petitioner. Learned Appellate Court allowed the application with observation that evidence sought to be produced by the appellant (respondent-Gurjit Kaur) is essential for just decision of the case.

5. Learned counsel for the petitioner has argued that while allowing application learned Appellate Court has not looked into this fact that respondent was allowed about 20 adjournments by the trial Court to produce defence evidence. This observation of the Appellate Court that respondent was suffering from cancer, as such, could not produce evidence, is also not correct as by the time the case was fixed for defence evidence the respondent had got cured. After the closure of defence evidence of respondent by order allowing of application under Section 391 Cr.P.C. is misuse of process of Court. He has further argued that enquiry report of the DSP dated 09.11.2005 is already on file as Ex. DC and the power of attorney in favour of Gurcharan Singh Begol, Advocate is on file as mark 'C'.

6. Learned counsel for the respondent has argued that though

counsel for the petitioner has tried to assail order passed by the Appellate Court on various grounds but he has not pointed out as to how documents sought to be produced by the respondent are not material for just decision of the case. Certified copy of the judgment in case titled as '*State vs. Charanjit Singh etc.*' is a document which is *per se* admissible. No prejudice will be caused to petitioner if power of attorney of respondent in favour of Gurcharan Singh Begol, Advocate is proved on file. The enquiry report of DSP, Phagwara dated 09.11.2005 is not on record. In case that document is already on record, respondent was not required to seek additional evidence and if the petitioner suffers statement that she has no objection if the enquiry report of DSP, Phagwara be read in evidence, she will withdraw her application to this extent.

7. Section 391 Cr.P.C. empowers the Appellate Court to take additional evidence if the same is necessary in order to enable it to give correct and proper finding. The legislative intent to enact Section 391 Cr.P.C. appears to be to empower the Appellate Court to see that justice is done to the prosecutor as well as the person prosecuted. The powers conferred on the Appellate Court are discretionary powers and it does not require any application of the counsel for complainant/prosecutor, convict or accused to invoke its powers.

8. In this case the respondent has put forth a specific plea that she had given cheque to her counsel Gurcharan Singh Begol, who was engaged on her behalf in case titled as '*State vs. Charanjit Singh etc.*'. In order to prove that Gurcharan Singh Begol, Advocate was engaged, she wants to prove on record the power of attorney given by her in his favour by placing the same on file. Admittedly, copy of power of attorney is already on record

as mark 'C'. The respondent wants to place on record copy of the enquiry report of DSP, Phagwara dated 09.11.2005, which the counsel for petitioner has submitted that the same is already on file. This shows that the petitioner is not aggrieved by that report. So far as copy of judgment passed in case titled as '*State vs. Charanjit Singh etc.*' is concerned, it is a document, which is *per se* admissible. The purpose of the petition is only to prove that petitioner-Asha Rani is none else but the cousin of Gurcharan Singh Begol, Advocate and proof of this fact on file will help her in proving her defence about misuse of her cheque given to Gurcharan Singh Begol, Advocate. The documents sought to be produced are from the Court record and cannot be termed as created one.

9. Keeping in view facts and circumstances of the case, the Appellate Court while allowing the application has observed that these documents are essential for just decision of the case and I find no reason to differ with findings so recorded by learned Additional Sessions Judge, Jalandhar.

10. This petition has no merit and the same is dismissed.

October 11, 2018

jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No