

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

**CRR-1291-2017 (O&M)
Date of decision : 15.02.2018**

Kulbhushan Singh

.....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Petitioner in person along with
 Mr. A.S. Gill, Advocate
 for the petitioner(s).

Mr. Pawan Sharda, Sr. D.A.G., Punjab.

Respondent No.2 present in person along with
Mr. Kunal Dawar, Advocate.

ANITA CHAUDHRY, J.

The petitioner has assailed the order dated 09.03.2017 passed by the Additional Sessions Judge, Rupnagar vide which his application filed under Section 391 Cr.P.C. had been dismissed.

During the pendency of this petition, the petitioner had submitted that he was ready to settle the dispute and also transfer some land in the name of his minor daughter. The matter was referred for mediation. Mediation had failed. An undertaking had been given there that he would clear the arrears and Rs.91,000/- was paid to respondent No.2 in this Court on 04.12.2017 and Rs.14,000/- have been paid today.

I have heard both the sides.

Learned counsel for the petitioner contends that the wife had lodged an FIR in 2007 under Section 498-A, 406 and 34 of IPC and challan

had been presented and the trial had ended in his conviction and during appeal they had filed an application Annexure P-2 seeking permission to lead additional evidence and a prayer for recall of PW-1 and PW-2 was made for further cross-examination. Counsel contends that when the statement of Sarita and Sukhdev Singh was being recorded a compromise had been effected and the couple started living together and cohabitation was continuing even at the point when the cross-examination was conducted and she had made a statement that she did not want to press the charges against the accused in view of the resumption of the cohabitation and therefore they did not make effective cross-examination on the witnesses and the counsel also failed to put questions to the witness and they were seeking another opportunity to cross-examine the two witnesses. The counsel pointed out to the statement made by Sarita is available on file.

The submission on behalf of the private respondent is that the statement of the complainant had been recorded in January, 2009 and the conviction was recorded in May, 2012 and appeal was preferred on 19.05.2012 and no application was filed along with the appeal and 4 years after the filing of the appeal, an application had been filed which has been dismissed. It was urged that the prosecution had moved an application under Section 311 Cr.P.C. which was dismissed and if they wanted to further cross-examine the witnesses that was the opportunity which could have been availed when the matter was before the trial Court and cross-examination was effected and full opportunity was granted and there is no material to show that any quashing petition had been filed in the High Court on the basis of the settlement and the application had been filed to prolong the case.

The appellant had been convicted and his appeal is pending before the First Appellate Court. After 4 years of filing of the appeal, he moved an application seeking permission to lead additional evidence and thereby seek recall of two witnesses for further cross-examination. The First Appellate Court dismissed the application noted the following:-

“Be so as it may, the application is given under Section 391 Cr.P.C., seeking permission to lead additional evidence in appeal by recalling PW-1 Sarita Devi and PW-2 Sukhdev Singh for cross-examination. Hence, Section 391 of the Cr.P.C. assumes importance which enumerates that while dealing with an appeal, Appellant 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. It is to be noted here that this Court has not sought such additional evidence nor such evidence is found to be necessary, from careful perusal of the record of the case. Rather, the same appears to be drafted in clandestine manner for getting an opportunity to re-open the matter by cross-examining of PW-1 Sarita Devi and PW-2 Sukhdev Singh. A perusal of the file further reveals that PW-1 Sarita Devi was examined on 14.11.2008 and PW-2 Sukhdev Singh on 06.11.2009 i.e. almost 8-9 years ago. The applicant-accused, through his counsel Shri G.S. Sandhu availed due and effective opportunities to cross-examine both these witness and in fact, they were cross-examined at length by the said counsel. Hence, It does not lie in the mouth of applicant-appellant that he did not get effective opportunity to cross-examine these witnesses due to settlement effected between the parties or that a quashing petition was to be filed before the Hon'ble High Court. The applicant-appellant was always at liberty in filing a quashing petition before the competent Court of law and it is not his version that he was ever refrained in this regard by the complainant or prosecution.”

A perusal of the statement made by the complainant shows that in the examination-in-chief, she made similar statement as given to the police but towards the end of her statement she refers to the compromise

and the fact that she was living with the husband for the last 8 months, it is thereafter that the cross-examination starts and on the same day. In the cross-examination she had stated that she did not want to take any action against the accused now. But the trial had ended in conviction. It is for the Appellate Court to see whether the statement could be accepted, it cannot be seen here.

So far as the additional evidence is concerned, the accused was represented by a counsel, the witness was offered for cross-examination and cross-examination was effected. It is not a case where some new evidence has come to the fore and recall becomes necessary. The statement had been recorded in January, 2009 and the trial Court had decided the case in 2012 and the application before the First Appellate Court was moved in September 2016.

I see no merit in the petition. The petitioner could not have invoked the provisions of Section 391 Cr.P.C. on the plea set up by them.

The petition is dismissed.

February 15, 2018

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**(ANITA CHAUDHRY)
JUDGE**

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