

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

CRR-4575-2017(O&M)

Date of decision:-22.2.2018

Gulzar Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

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

Present: Mr.Veneet Sharma, Advocate
for the petitioner.

H.S. MADAAN, J.

Accused – Baldev Singh, Roor Singh, Sukhdev Singh and Kashmir Kaur faced trial in FIR No.252 of 2007 for the offences under Sections 419, 420, 468 and 471 IPC, registered with Police Station Civil Lines, Amritsar. Learned Judicial Magistrate Ist Class, Amritsar vide judgment dated 30.10.2014 convicted the accused for the offences under Sections 120-B, 419, 420, 465, 468 and 471 IPC and sentenced them accordingly.

Briefly stated, the prosecution story happened to be that accused Baldev Singh and Kashmir Kaur conspired with their co-accused so as to cheat Gulzar Singh impersonating as Gulzar Singh and his wife forging agreement to sell with Narinder Singh and used it as a genuine

receiving Rs.2 lakhs as earnest money. Roor Singh and Sukhdev Singh had attested that forged agreement to sell.

Accused Baldev Singh, Kashmir Kaur and Sukhdev Singh had preferred an appeal to the Court of Sessions. During the pendency of the appeal, the complainant/petitioner Gulzar Singh filed an application under Section 391 Cr.P.C. for placing on record certified copy of written statement filed by accused Baldev Singh in the Court of the then Civil Judge (Jr.Divn.), Amritsar and certified copy of the cross-examination of Baldev Singh recorded on 24.5.2016. However, that application was dismissed by learned Additional Sessions Judge, Amritsar vide order dated 5.9.2017 observing as under:

“ In the instant case, perusal of the record reveals that FIR of this case has been registered against the accused on the basis of application moved by Gulzar Singh on the allegations that he is the owner of land measuring 24 kanals 4 marlas and is joint owner in cultivating possession of the said land. He came to know that Baldev Singh executed an agreement to sell dated 3.1.2007 with one Narinder Singh son of Harbans Singh and received Rs.2,00,000/- as earnest money from said Narinder Singh. He never thumb marked the said agreement and same is alleged to have been prepared by Baldev Singh in connivance with other attesting witnesses. Kashmir Kaur accused alleged to be wrongly described as wife of Gulzar Singh. After completion of investigation challan was presented. Charge was framed vide order dated 25.2.2009 and thereafter prosecution led the evidence and same was closed by order vide order dated 12.4.2013. Statements of the accused under Section 313 Cr.P.C were recorded. Thereafter, prosecution moved an application under Section 311 Cr.P.C for leading additional evidence to

produce certified copy of the plaint, certified copy of the compromise and certified copy of order dated 6.8.2009 and that application was dismissed. Then accused did not lead any evidence in defence and closed the same on 30.10.2014 and on the same day after hearing the arguments, accused were convicted and sentenced.

Perusal of file further reveals that this appeal was filed on 26.11.2014. In the connected appeal titled as “Gulzar Singh Versus Baldev Singh and others” complainant moved an application under Section 311Cr.P.C for placing on record certified copy of written statement filed by accused Baldev Singh and Kashmir Kaur in the Court of Sh.K.K.Jain, the then Civil Judge (Junior Division), Amritsar and that application was dismissed by the Court of Sh.K.K.Goyal, the then Additional District Judge, Amritsar vide order dated 2.12.2015. On 21.1.2016, complainant moved an application under Section 391 Cr.P.C which was dismissed as withdrawn on 8.12.2016 as per the statement made by counsel for the complainant and on the same day complainant moved the instant application. The documents sought to be produced in the additional evidence are not necessary for proper adjudication of the case and, thus, the complainant is not entitled to lead the additional evidence.

Feeling aggrieved by this order, the complainant has approached this Court by way of filing of present petition.

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

In the impugned order while referring to the judgment passed by this Court i.e. **Jai Singh Versus Haryana Agro Industries Corporation Limited, Narnaul, 2006(3), RCR (Criminal) 936**, it has been

observed that power under Section 391 Cr.P.C. can be exercised only where there is a failure of justice. Learned counsel for the petitioner has referred to authority **Avtar Singh Versus State of Punjab and another** by a Co-ordinate Bench of this Court in CRM-M-39954 of 2014 decided on 3.11.2017 allowing application under Section 391 Cr.P.C. while setting aside the order passed by the trial Court.

However, I do not find any merit in the arguments of learned counsel for the petitioner. The authority referred to by learned counsel for the petitioner is also not applicable due to different facts and circumstances and the context in which such observations have been made. Although learned counsel for the petitioner has argued that it is wrongly mentioned in the impugned order that the prosecution had moved an application under Section 311 Cr.P.C. for leading additional evidence to produce certified copy of the plaint, certified copy of the compromise and certified copy of order dated 6.8.2009, which was dismissed and that accused did not lead any evidence in defence and closed the same. However, till date no attempt has been made to get the observations in the order corrected and order passed by a Court of competent jurisdiction is taken to be correct and it cannot be presumed that something written therein is factually wrong. The judgment passed by the trial Court is dated 30.10.2014. Thus, no ground is there to allow the application and learned Additional Sessions Judge, Amritsar has rightly declined the same. Even otherwise, accused have been convicted by the trial Magistrate and it is difficult to understand as to how and why the complainant is feeling apprehensive and want to bring such documents on file.

The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

In the present case, I do not find any such illegality or infirmity with the impugned order much less apparent on the face of it. The order is certainly not in violation of settled principles of criminal jurisprudence. I do not see any reason to upset the impugned order.

Finding no merit in the petition, the same stands dismissed.

22.2.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No