

CRR-81-2018

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-81-2018

Date of Decision: 12th January, 2018

Jatinder Kumar Mehta

...Petitioner

Versus

Rajesh Kumar & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Kunal Vinayak, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court assailing the order dated 07.12.2017 passed by the learned Additional Sessions Judge, Amritsar, whereby, an application preferred by the petitioner under Section 391 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') in an appeal, in which, the petitioner stands convicted under Section 138 of the Negotiable Instruments Act, has been dismissed.

2. It is the contention of the learned counsel for the petitioner that the application under Section 391 of Cr.P.C., as was preferred by the petitioner should have been heard along with the appeal and the appeal should have been decided along with the application. He further states that the Court, while deciding the application, has not really considered the

factual position and the necessity of moving such an application at the appellate stage. He contends that while disposing of the application, the Appellate Court has simply observed that the applicant has been negligent before the trial Court in filing an appropriate application at that stage and therefore, the said application has been dismissed. He places reliance upon the judgment of Gwallior Bench of Madhaya Pradesh High Court in **Durgesh Kumar Vs. J.B.Singh & another**, 2015 (45) R.C.R. (Criminal) 435 as also the judgment of Kerala High Court in **Joseph Vs. Gladis Sasi**, 2011 (1) R.C.R. (Criminal) 164, in support of his contentions.

3. I have considered the submissions made by the counsel for the petitioner and have gone through the impugned order as also the judgments on which reliance has been placed.

4. Firstly, there is no mandate under the statute that an application under Section 391 of Cr.P.C. has to be decided along with the appeal or at the time when the appeal is heard on merits and decided. On reading the language of the provisions i.e. Section 391 of Cr.P.C., it is apparent that it is the satisfaction of the Court, who is dealing with the appeal that whether the additional evidence is necessary and such application, if any, moved by the accused can be considered and accepted by taking additional evidence. Perusal of said Section would further show that the appeal is not mandated to be decided along with the application.

5. As regards the judgment of *Durgesh Kumar's* case (supra), suffice it to say that the Court had misread the judgment of the Hon'ble Supreme Court on which reliance has been placed where intent and purpose

of the Court was that while dealing with the application under Section 391 of Cr.P.C., the same should not be decided in isolation without taking into consideration the facts and circumstances of the case and the necessity or otherwise of such an additional evidence to be permitted to be led or called for.

6. In the present case, the learned Additional Sessions Judge, Amritsar, in the impugned order, has, in detail taken note of the stand taken by the petitioner which primarily is a part of the appellant's grounds of appeal as also the reply, which has been filed thereto. The basic arguments and the factual aspect has been taken note of by the Court while deciding the said application and therefore, the mandate of the statute as also the judgment of the Supreme Court, reliance whereof has been placed in *Durgesh Kumar's* case (supra), stands satisfied.

7. In the present case, merit of the matter is not as such being dealt with at this stage lest prejudice is caused to the petitioners' pending appeal, suffice it to say that the application for additional evidence, which was filed for examination of a Hand-writing Expert to compare the writing on the body of the cheque, which has been asserted by the petitioner to have not been written by him does not have any material significance especially when the signatures on the cheque have been admitted by the petitioner. It is neither the case of the complainant nor has it been asserted by him that the cheque was filled by the petitioner himself.

8. The disposal of the application vide the impugned order does not suffer from any illegality, which would call for any interference by this

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Court in exercise of its revisional jurisdiction.

In view of the above, the present petition is dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

12th January, 2018

Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No