

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 730 of 2019

- Madhup Bhura, S/o Late Mahendra Bhura, Aged About 51 Years, R/o Civic Center Bhilai, Police Station Bhilainagar, Tahsil & District Durg, Chhattisgarh. Other Address Aregation System Private Limited 11, Industrial Area, Behind Sharma Steel, Rico Industrial Area, Jaipur, District-Jaipur, Rajasthan.

---- Petitioner

Versus

- State of Chhattisgarh Through The District Magistrate, Durg, Chhattisgarh.

---- Respondent

For petitioner	:	Mr. Sumesh Bajaj, Advocate.
For Respondent/State	:	Mr. Ghanshyam Patel, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on board

02/09/2019

1. Petition under Article 226/227 of Constitution of India has been brought for setting aside order dated 8.3.2019 and directing the Court below to decide the first application under Section 391 fo CrPC and then to decide appeal finally.
2. It is submitted that when the petitioner was prosecuted before the trial Court for the offence punishable under Section 420 of IPC in Criminal Case No.672 of 2010 which was decided on 2.3.2017 and the petitioner has been convicted vide Annexure-P1. Subsequent to that, the petitioner filed an appeal registered as No.39/2017 before the Court of Sessions Judge, Durg, challenging his conviction and the same is pending consideration. In the meantime, the petitioner has obtained some documents showing allotment of disputed land in his favor by Bhilai Steel Plant, which demonstrate his innocence. These

documents were not filed along with charge-sheet and neither were in possession of the petitioner at the time when the case was pending before the trial Court. In these circumstances, the petitioner filed an application under Section 391 of CrPC before the appellate Court seeking permission to lead additional evidence. However, the appellate Court vide order dated 8.3.2019 ordered that the application filed by the petitioner under Section 391 CrPC shall be decided at the time of passing final judgment in the appeal.

It is submitted that the Court below erred in not deciding the application filed under Section 391 of CrPC by the petitioner. It is submitted that appellate Court ought to have decided the application filed under Section 391 of CrPC before hearing the final arguments in appeal. Provisions of Section 391 of CrPC are also very clear that any prayer made for submitting additional evidence is to be considered and decided before the decision in the appeal. Hence, it is prayed that this petition be allowed and appropriate order may be passed in this regard.

3. Learned State counsel opposes the petition and submissions made in this respect.
4. I have heard both the parties and perused the documents on record.
5. Section 391 of CrPC reads thus:-

“391. Appellate Court may take further evidence or direct it to be taken.

(1) In dealing with any appeal under this Chapter, the Appellate 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, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such

evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.”

6. Sub-section (1) of Section 391 of CrPC specifically provides that if the appellate Court is convinced that additional evidence is necessary to be taken, then it shall either take the evidence itself or direct the Magistrate to record the evidence. Sub-section (2) lays down in categorical terms that if the additional evidence is taken by the concerned Court, then it shall certify such evidence to the appellate court and then the appellate Court shall thereupon proceed to dispose of that appeal.
7. Thus, a plain reading of Section 391 of CrPC clearly shows that if any application is filed for taking additional evidence at the appellate stage, then the appellate Court shall have to be dispose of said application before deciding the appeal finally. Hence, this Court is of the considered view that the appellate Court has committed an error in passing the order dated 8.3.2019 and directing that the application filed under Section 391 of CrPC shall be considered and decided at the time of deciding the appeal finally.
8. Accordingly, the writ petition is allowed at the motion stage itself and the impugned order dated 8.3.2019 is hereby set aside. The Court below concerned is directed to decide the application filed by the petitioner under Section 391 of CrPC in accordance with law, before hearing and deciding the appeal on merits.

Sd/-

(Rajendra Chandra Singh Samant)

Judge