

HIGH COURT OF CHHATTISGARH, BILASPURCr.M.P.No.1989 of 2019

Yogeshdhar Diwan, S/o Ramadhar Diwan, Aged about
46, R/o B-1, Krishna Apartment, Bazaar Chowk,
Changorabhata, Raipur (CG)

----- Petitioner

Versus

Tularam Sahu S/o Ramunath Sahu, R/o Kadam Chowk,
Professor Chowk, Colony, Raipur (CG)

----- Respondent

For Petitioner	: Ms K. Tripti Rao, Advocate
For Respondent	: Mr.B.D.Guru, Advocate

Hon'ble Shri Justice Sanjay K. AgrawalOrder on Board05/11/2019

1. The petitioner herein has been convicted for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 by the trial Magistrate on 19.2.2019, against which, he preferred appeal before the Appeal Court, in which he moved an application under Section 391 of the CrPC for adducing additional evidence, which has been rejected by the Appeal Court, against which, this CrMP has been preferred.
2. Ms K. Tripti Rao, learned counsel counsel for the petitioner, would submit that the trial Court was absolutely unjustified in closing his opportunity to lead evidence and to adduce evidence of the Branch Manager of the State Bank of India, as such,

application for additional evidence ought to have been allowed by the Appeal Court.

3. On the other hand, Mr.B.D.Guru, learned counsel for the respondent, would support the impugned order.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. The petitioner summoned the officer of the State Bank of India, SSI Branch, Raipur as his witness and he was served through the summons of the Court on 22.1.2019, on that day, counsel of SBI appeared and sought time and it was adjourned for 28.1.2019, but on 28.1.2019 witness of the SBI did not appear, which led to closure of opportunity to the accused and thereafter he has been convicted. In fact, the trial Court ought to have issued fresh summons to the said witness as for default of witness in appearance, the accused cannot be made to suffer.
6. Since the matter is listed for final hearing on 6.11.2019, the Appeal Court is directed to consider the fact that despite the fact that accused paid process fee, counsel appeared on behalf of said witness and sought time, which was granted, but he did not appear, the trial Court ought to have secured the presence of witness of SBI, which the

trial Court did not do and closed the opportunity of the petitioner to lead evidence.

7. In view of that, the matter is remitted to the Appeal Court. Denial of opportunity to lead evidence of the SBI witness will be considered afresh by the Appeal Court while considering the appeal preferred by the petitioner in proper perspective as noticed hereinabove.

8. With the aforesaid observation, the CrMP finally stands disposed of. A copy of this order be sent to the concerned Appellate Court through fax today.

Certified copy today.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-