

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

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CRR No.1112 of 2019 (O&M)

Date of decision: 12.07.2019.

Krishan Kumar

..... Petitioner.

Versus

Rakesh

.... Respondent.

CORAM :HON'BLE MR.JUSTICE ANUPINDER SINGH GREWAL

Present:- Mr. Amit Jain, Advocate for the petitioner.

Anupinder Singh Grewal, J. (Oral)

The petitioner has challenged the order of the Appellate Court dated 09.04.2019 whereby his application under Section 311 of the Cr.P.C. has been dismissed.

Learned counsel for the petitioner contends that the application was in fact under Section 391 of the Cr.P.C. and there was an inadvertent error which mentioned the application as under Section 311 of the Cr.P.C. He further contends that the application was for producing handwriting and finger print expert to examine the receipts issued by the petitioner to the complainant which had been produced by the complainant in the trial Court. The receipts were not part of the legal notice and the complaint but the same were produced by the complainant in his cross-examination and, therefore, it would be in the interest of justice if the petitioner is granted an opportunity to lead additional evidence by examining handwriting expert. He has also cited the judgment of the Supreme Court in the case of **Rambhau and another vs. State of Maharashtra, (2001) 4 SCC 759**, and the judgments of the Coordinate Benches of this Court in **CRM-M-6246 of 2018** titled as **Paramjit Singh @ Pammi vs. State of Punjab** and **Avtar Singh vs. State of Punjab, 2018 (2) RCR (Criminal) 21** in support of his arguments.

Heard.

The petitioner was accused under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to, 'the Act') for having issued a cheque for an amount of ₹9,36,000/- on 25.04.2015 which was dishonoured due to insufficient funds. The complainant had served him a legal notice within the statutory period and on the failure of the petitioner to make the payment within the mandatory period of 15 days, the complaint was filed on 24.07.2015. At the conclusion of the trial, the petitioner was convicted under Section 138 of the Act by the judgment dated 18.09.2017 and sentenced to undergo simple imprisonment for a period of one year and to pay compensation of ₹14 lacs. The receipts Ex.C8 and Ex.C10 had been produced by the complainant in the trial Court on 12.04.2017 and the petitioner had been granted adequate opportunity to cross-examine the complainant and to lead evidence in his defence. He was convicted in the year 2017 and the application was preferred by him only in July, 2018, after a year of his conviction. The Appellate Court, while dismissing the application of the petitioner, has held that it is a ploy to fill up the lacunae and the petitioner did not avail the opportunities granted to him in the course of trial.

The judgments relied upon by the counsel for the petitioner are distinguishable on facts from the instant case. None of them pertains to a case under the Act. It is fairly common that the accused resort to dilatory tactics to avoid the rigour of punishment under the Act.

In the case of **Rambhau and another vs. State of Maharashtra (supra)**, the accused had been convicted under the Prevention of Corruption Act, 1988. The factum of demand on 24.01.1989 had not been put to the accused while they were examined under Section 313 of the Cr.P.C. although the demand on 23.01.1989 was proved and concluded with search of accused on 24.01.1989. It

was in these circumstances that the Supreme Court held that it was a mere irregularity which had been cured by the High Court by examining the accused under Section 391 of the Cr.P.C.

In **Avtar Singh vs. State of Punjab (supra)**, a Coordinate Bench of this Court allowed the application under Section 391 of the Cr.P.C. as the original documents, which were sought to be proved, were not with the accused and had come to his knowledge after the death of his father. In **Paramjit Singh @ Pammi vs. State of Punjab (supra)**, the application under Section 391 of the Cr.P.C. was allowed as it was found to be in the interest of justice, as the accused had allegedly misappropriated diesel and the documents reflecting the entries of the oil tankers bearing the signatures of the accused were in question.

It is trite that Section 391 of the Cr.P.C. is an exception to the general rule that an appeal must be decided on the evidence led before the trial Court and resort to Section 391 of the Cr.P.C. must be with caution and circumspection to advance the cause of justice.

In the instant case, the petitioner had been convicted under Section 138 of the Act in the year 2017 and he had been granted adequate opportunity in the course of the trial to lead evidence in his defence, but he did not move any application for examination of handwriting expert at that time. Therefore, I do not find any manifest illegality in the impugned order, which would warrant interference while exercising revisional jurisdiction.

Consequently, the petition stands dismissed.

(ANUPINDER SINGH GREWAL)
JUDGE

July 12, 2019
sonia gugnani

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