

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

**CRM-M-6246-2018**  
**Reserved on : 05.03.2019**  
**Pronounced on : 12 .03.2019**

**Paramjit Singh @ Pammi**

**...Petitioner**

**Versus**

**State of Punjab**

**...Respondent**

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Mr. Rishabh Gupta, Advocate  
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

**ARVIND SINGH SANGWAN, J.**

Prayer in this petition is for quashing of order dated 19.01.2018 (Annexure P-3), vide which, an application filed by the petitioner under Section 391 Cr.P.C. for leading additional evidence and to allow him to take photographs of his standard and disputed handwriting for comparison through a Handwriting Expert has been dismissed.

Brief facts of the case are that the petitioner along with four other co-accused, namely Amarjit Singh, Prem Sagar, Pawan Kumar and Jagdeep Singh, faced trial in FIR No. 26 dated 19.02.2008, under Sections 409, 420, 465, 466, 467, 468, 471, 477-A and 120-B of the IPC and the trial Court, after conducting a full length trial, vide judgment dated 02.03.2016, held the petitioner guilty of hatching conspiracy with co-accused Jagdeep Singh and others, who were not nominated as accused by the Investigating Officer, and has misappropriated 36000 liters of diesel being employee of the Punjab Roadways. Accordingly, the petitioner was held guilty for

commission of offence punishable under Sections 409, 467, 468, 471 and 120-B of the IPC and was sentenced to undergo a maximum sentence of three years and to pay the fine under the provisions of the aforesaid sections. However, other accused persons were acquitted.

Aggrieved, the petitioner filed an appeal before the lower appellate Court and during the pendency of the appeal, he moved an application under Section 391 Cr.P.C. for leading additional evidence which was dismissed, vide impugned order.

In nutshell, the case set up by the prosecution against the petitioner, in the FIR, is that General Manager, Punjab Roadways, Hoshiarpur sent a letter to Senior Superintendent of Police, Hoshiarpur regarding embezzlement of 36000 liters of diesel worth Rs. 10,46,709/-, in which, it was submitted that in January, 2008, Indian Oil Corporation, Jalandhar (*for short 'IOC'*) supplied 17 tankers of diesel containing 12000 liters in each tanker and when the supply was cross-checked and tallied with the official record it came to notice that only 14 tankers of diesel were received, but tanker bearing registration No. PB-07-R-3277 and tanker bearing registration No. PB-07-P-7335 of M/s Saini Oil Carrier and third tanker bearing registration No. PB-08-AJ-4735 of M/s Suman Oil Carrier were not received in the depot of the roadways. The diesel containing in these three tankers have been misappropriated somewhere else. The record regarding these supplies have also been misplaced from the office. The office of the General Manager, Punjab Roadways, Hoshiarpur asked IOC to send challan receipts regarding supply of the oil. From the copies of challan receipts, it is clear that the signatures of Assistant Security Officer and Assistant Mechanical Engineer are forged. The misappropriation of the

diesel has been committed/done in connivance with the tanker drivers and staff of the office of diesel pump. It was further stated that on the relevant days, Paramjit Singh, DPA, Amarjit Singh, DPA, Pawan Kumar, DPA and Prem Sagar, Clerk, Diesel Pump were on duty and the diesel tankers were locked with special locks by the IOC and one key remains with the cashier of the depot and the second key remains with the staff of depot of IOC. In this way, the role of the officials of IOC as well as of concerned roadways was suspected. It was also stated that Yard Master makes the entry of every vehicle which enters into the yard of depot. The above three vehicles have been entered in the yard register. The entries of these vehicles were made in the different handwriting in the yard register, which did not tally with the other handwriting of the yard register. The record of the yard register remains with Dharam Pal and Swaran Singh, Yard Masters. Upon this application, the present FIR was registered and after necessary investigation, the challan was presented against the accused. The trial Court, after trial, convicted the petitioner, however, acquitted the three other co-accused, as mentioned above.

Learned counsel for the petitioner has argued that as per prosecution evidence, the petitioner/applicant has signed the documents Ex. PW2/G, Ex. PW8/19, Ex. PW8/20, Ex. PW10/A and Ex. PW2/H, however, the said documents are not of the petitioner and he has never put his signatures on these documents and in order to prove this fact, the petitioner wants to examine a Handwriting Expert who will compare the standards signatures of the petitioner with the signatures of the petitioners available on these documents. It is further stated in the application that though the handwriting signatures of the co-accused were taken in Court for

comparison, however, the signatures of the petitioner were not taken during investigation or during trial and the prosecution knowing well that the signatures on the aforesaid documents are not of the petitioner, did not get the same compared with standard signatures of the petitioner so that it may not come on record as these are not appended by the petitioner.

Learned State counsel opposed the prayer of the applicant/petitioner and the lower appellate Court, vide impugned order dated 19.01.2018, dismissed the application by passing the following order:

**“Heard, on the application under Section 391 Cr.P.C. for taking further evidence and allow the handwriting expert to take the photographs of the standard as well as disputed handwriting of the applicant for comparison of the same.**

**The application has been moved on the ground that the prosecution has alleged the signatures of the applicant on some of the documents and in order to prove the same, the applicant wants to examine handwriting expert for comparison of the disputed signatures of applicant with his standard signatures. The learned counsel for the applicant/appellant has argued that during the investigation of the case, signatures of co-accused were taken in the Court, however, not that of applicant-accused for the reasons that his signatures does not tally. Thus it has been contended that now the applicant wants to examine any handwriting expert in defence and permission for that purpose be granted for taking further evidence in this regard.**

**At the outset, it is important to observe that the allegations in brief has been that accused Paramjit Singh alongwith co-accused being working in Indian**

**Oil Depot in various capacities embezzled three oil tankers by forging certain documents in this regard. It has been argued also that the signatures of co-accused were got obtained and were sent for comparison to the Forensic Science Laboratory.**

**At the outset, it is settled principle of law that accused cannot seek any direction from the Court for the investigation agency to do the investigation in a particular way so suited to the accused. It is for the investigating agency to collect the best piece of evidence during investigation, in order to connect the accused with the alleged offence and thereafter lead such evidence in the court in order to prove the charges against the accused. The record of the trial court show that specimen signatures of applicant/appellant were not taken in the court during investigation. So for that manner, accused could not have sought directions, as above observed, for taking of his signatures as well.**

**Perusal of record would show that report of Forensic Science Laboratory, which had earlier not been led into evidence by the prosecution, however, at the final end of the trial was allowed to be led into evidence and that too on the application of co-accused of the applicant only. Perusal of report would show that admitted writing of applicant/accused in English on Stock Register and meter register were taken as Mark-A 14 to A16 and that admitted writings were also compared with questioned writing Q17 to Q24 as well. So the ground so pleaded has no legs to stand. Apart from that record would show that sufficient opportunities were also granted to the defence to lead their defence evidence as well. The applicant-appellant was at liberty in case he wanted to**

**controvert the said Forensic Science Laboratory report. There has been nothing pleaded as far as present application is concerned as to why the applicant-appellant did not choose to lead any such evidence, however, the ground so pleaded about the investigating agency having not taken the specimen signatures, has no legal base. The case law so relied upon by the learned counsel for appellant titled as *Ashok Tshering Bhuttia vs. State of Sikkim 2011 Crl. L.J. 1970*, in the circumstances would not be applicable. The application being bereft of any merits stands dismissed.”**

Learned counsel for the petitioner has argued that the only ground taken by the lower appellate Court is that the petitioner has not led the proposed evidence on an earlier occasion especially when the trial was pending before the trial Court. It has also been observed by the lower appellate Court that at the fag end of trial, an application was moved by the prosecution to prove the report of FSL which shows that signatures of the petitioner appended in English on the stock register and meter register were compared with the disputed questions, therefore, application is not maintainable. It was also held that no cogent reason has been given in the application as to why the same is being filed at a delayed stage.

Learned counsel for the petitioner has relied upon the judgment dated 29.01.2019, passed by this Court in ***CRM-M-3637-2016***, titled as ***Balbir Singh vs. Kulwant Singh***. The operative part of the order reads as under:

**“Counsel for the petitioner has relied upon a recent judgment passed by the Hon'ble Supreme Court in Criminal Appeal No.48 of 2019 (arising out of SLP**

(Crl.) No.1120 of 2017) titled as “Brig. Sukhjeet Singh (Retd.) MVC vs The State of Uttar Pradesh and others” decided on 24.01.2019, wherein the Hon'ble Supreme Court has held as under:-

“...11. In the present appeal, we are concerned only with the rejection of application filed by the appellant under Section 391 Cr.P.C. before the Session Judge in the criminal appeal filed by him against the conviction order, whether the Session Judge committed error in not exercising power under Section 391 Cr.P.C. to permit the appellant to lead additional evidence is a question to be answered. Whether the High Court committed error in not exercising power under Section 482 Cr.P.C. as to secure the ends of justice?

12. Chapter XXIX of the Code of Criminal Procedure, 1973 deals with “Appeals”. Section 391 Cr.P.C. empowers the Appellate Court to take further evidence or direct it to be taken. Section 391 is as follows:-

“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.”**

**13. The key words in Section 391(1) are “if it thinks additional evidence to be necessary”. The word “necessary” used in Section 391(1) is to mean necessary for deciding the appeal. The appeal has been filed by the accused, who have been convicted. The powers of Appellate Court are contained in Section 386. In an appeal from a conviction, an Appellate Court can exercise power under Section 386(b), which is to the following effect:-**

**(b) in an appeal from a conviction- (i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re- tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or (ii) alter the finding, maintaining the sentence, or (iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the Same;**

**14. Power to take additional evidence under Section 391 is, thus, with an object to appropriately decide the appeal by the Appellate Court to secure ends of justice. The scope and ambit of Section 391 Cr.P.C. has come up for consideration before this Court in Rajeswar Prasad Misra Vs. State of West Bengal and Another, AIR 1965 SC 1887. Justice Hidayatullah, speaking for the Bench held that a wide discretion is conferred on the Appellate Courts and the additional evidence may be necessary for a variety of reasons. He held that additional evidence must be necessary**

not because it would be impossible to pronounce judgment but because there would be failure of justice without it. Following was laid down in Paragraph Nos. 8 and 9:-

“8. .... Since a wide discretion is conferred on appellate courts, the limits of that courts’ jurisdiction must obviously be dictated by the exigency of the situation and fair play and good sense appear to be the only safe guides. There is, no doubt, some analogy between the power to order a retrial and the power to take additional evidence. The former is an extreme step appropriately taken if additional evidence will not suffice. Both actions subsume failure of justice as a condition precedent. There the resemblance ends and it is hardly proper to construe one section with the aid of observations made by this Court in the interpretation of the other section. 9. Additional evidence may be necessary for a variety of reasons which it is hardly proper to construe one section with the aid of observations made to do what the legislature has refrained from doing, namely, to control discretion of the appellate court to certain stated circumstances. It may, however, be said that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it. The power must be exercised sparingly and only in suitable cases. Once such action is justified, there is no restriction on the kind of evidence which may

be received. It may be formal or substantial. It must, of course, not be received in such a way as to cause prejudice to the accused as for example it should not be received as a disguise for a retrial or to change the nature of the case against him. The order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it unless the requirements of justice dictate otherwise.....  
.....”

15. This Court again in *Rambhau and Another Vs. State of Maharashtra*, (2001) 4 SCC 759 had noted the power under Section 391 Cr.P.C. of the Appellate Court. Following was stated in Paragraph Nos. 1 and 2:-

“1. There is available a very wide discretion in the matter of obtaining additional evidence in terms of Section 391 of the Code of Criminal Procedure. A plain look at the statutory provisions (Section 391) would reveal the same..... 2. A word of caution however, ought to be introduced for guidance, to wit: that this additional evidence cannot and ought not to be received in such a way so as to cause any prejudice to the accused. It is not a disguise for a retrial or to change the nature of the case against the accused. This Court in the case of *Rajeswar Prasad Misra v. State of W.B.* in no uncertain terms observed that the order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it. This Court was candid enough to record however, that it is the concept of justice which ought to prevail and

**in the event, the same dictates exercise of power as conferred by the Code, there ought not to be any hesitation in that regard.”**

**16. From the law laid down by this Court as noted above, it is clear that there are no fetters on the power under Section 391 Cr.P.C. of the Appellate Court. All powers are conferred on the Court to secure ends of justice. The ultimate object of judicial administration is to secure ends of justice. Court exists for rendering justice to the people....”**

**In the aforesaid judgment, the Hon'ble Supreme Court while discussing two grounds rejecting the application under Section 391 Cr.P.C. by the Court of Sessions and High Court held that neither the filing of an application for additional evidence at a belated stage is a ground to reject the same nor the delay in decision of the appeal is a ground to dismiss the same if the proposed additional evidence enables the Court to secure the ends of justice in achieving the object of judicial administration.”**

Learned counsel for the petitioner has, thus, argued that if the petitioner is able to prove that his standards signatures do not tally with the signatures appended on the aforesaid documents, he can be acquitted and, therefore, the impugned order dated 19.01.2018, passed by the lower appellate Court, dismissing the application of the petitioner filed under Section 391 Cr.P.C., be set aside.

In reply, learned State counsel has submitted that the petitioner himself moved an application before the trial Court for examining the report of FSL and the present application has been moved by the petitioner just to delay the proceedings in the appeal and without any cogent reason.

After hearing learned counsel for the parties, I find merit in the present petition.

Though the present application has been moved for the first time before the lower appellate Court, however, in view of the judgment of Hon'ble Supreme Court in ***Brig. Sukhjeet Singh's case (supra)***, mere delay in filing the application is not a ground to reject the same if the proposed additional evidence allows the lower appellate Court to achieve the object of judicial administration and to secure the ends of justice.

In the instant case, the petitioner wants to examine a Handwriting Expert to take his standard signatures and tally with the disputed signatures appended on the aforesaid exhibited documents as referred in para 2 of the application. The same can be allowed by granting an opportunity to prosecution to rebut the same.

Therefore, considering the fact that in case the petitioner is able to dispel the prosecution evidence, which has formed basis for the conviction of petitioner by holding that the aforesaid documents bear the signatures of the petitioner, no prejudice will be caused to the prosecution.

Accordingly, the present petition is allowed and the impugned order dated 19.01.2018, passed by the lower appellate Court, dismissing the application of petitioner filed under Section 391 Cr.P.C., is set aside.

The lower appellate Court will grant an opportunity to the petitioner to produce a Handwriting Expert for taking photographs of his signatures on the aforesaid exhibited documents to compare the same with his standard signatures, which may be taken in Court or with some other standard signatures available in bank record or in any other document which was available at the relevant time when these exhibited documents were

signed, however, the petitioner will produced the Handwriting Expert as witness on his own expenses and responsibility.

The lower appellate Court will issue *dasti* summons for effecting service on the Handwriting Expert and needless to say, the prosecution will be given an opportunity to rebut the same.

March 12, 2019

*Waseem Ansari*

(ARVIND SINGH SANGWAN)  
JUDGE

*Whether speaking/reasoned*

*Yes/No*

*Whether reportable*

*Yes/No*