

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

**Criminal Revision No.1494 of 2017 (O&M)
Date of Decision: October 16, 2019**

Satpal Gandhi @ Satti

.....PETITIONER(s).

VERSUS

State of Punjab and others

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Sandeep Arora, Advocate
for the petitioner (s).

Mr. Avtar Singh Sandhu, Addl. A.G. Punjab.

Mr. Surinder Sharma, Advocate
for respondent No.2.

SURINDER GUPTA, J.

Heard.

Petitioner and respondent No.3-Som Nath were acquitted in case bearing FIR No.67 dated 24.08.2004 registered at Police Station Division No.2, Jalandhar for the offences punishable under Sections 447, 379, 427, 506 of Indian Penal Code vide judgment dated 15.01.2011 passed by Judicial Magistrate 1st Class, Jalandhar. The complainant filed appeal before the Court of Sessions and during pendency of appeal, he moved application (Annexure P-2) for permission to tender a number of documents mentioned in para 6-A to 6-H of the application.

Learned Additional Sessions Judge, Jalandhar partly allowed

24.03.1911 and the judgment dated 19.04.2005 in case titled "*Subhash Chander Vs. Mahant Baba Harnjit Shah Suthra etc.* bearing Civil Suit No.124/2001 passed by the Court of Civil Judge (Junior Division), Jalandhar. Learned Additional Sessions Judge after allowing the application, sent back the case to the trial Court for recording the evidence and to decide it afresh.

As per provisions of Section 391 Cr.P.C., Appellate Court may take additional evidence which it deems necessary. The Appellate Court may record such evidence on its own or direct it to be taken by the Magistrate. While passing order, learned Additional Sessions Judge appears to have gone beyond the scope and against the provisions of Section 391 Cr.P.C. while directing the trial Court to decide the case afresh after evaluating additional evidence. This order was passed even without setting aside the judgment of acquittal passed by the trial Court.

Learned counsel for the petitioner and learned State counsel are ad idem that the order of learned Additional Sessions Judge suffers from legal infirmity to the extent it directed the trial Court to decide the case afresh.

The order of learned Additional Sessions Judge, Jalandhar to the extent it directed the trial Court to decide the case afresh after evaluating additional evidence, is set aside.

The second question, which arises for consideration in this petition, is as to whether the the Appellate Court has committed error while allowing production of additional evidence i.e. certified copy of sale deed and the judgment in a civil suit?

Section 391 Cr.P.C. authorises the Appellate Court to allow production of additional evidence as it deems necessary. In the judgment passed by the trial Court, it was observed that certified copy of the sale deed has not been produced. The civil suit, copy of judgment of which has been sought to be placed on file, also pertains to the disputed property. Learned Appellate Court has found both the documents as necessary for deciding the dispute pertaining to the title and possession of the property in question, as such, has partly allowed the application of complainant.

Keeping in view the fact that the dispute in this case pertains to the title and possession of the property alleged to have been demolished by the petitioner and respondent No.3, I find no legal infirmity in the order of lower Appellate Court allowing the production of above referred two documents, which are certified copies. Petitioner may tender/prove both these documents as per order of the Appellate Authority before the trial court.

In view of my discussion above, this revision petition is partly allowed. Impugned order of learned Additional Sessions Judge, Jalandhar dated 05.04.2017 is set aside so far as it directs the trial Court to decide the case afresh after recording additional evidence. The petition challenging order dated 05.04.2017 (supra) allowing complainant Radha Krishan to prove the certified copies of sale deed and judgment in civil suit (referred above) is, however, upheld. Learned trial Court is directed to record additional evidence as allowed, give opportunity to the petitioner/accused to produce evidence in defence, if any, record statement as per provisions of Section 313 Cr.P.C., and send the file to the lower Appellate Court. The

Appellate Court will take the appeal on board and proceed further to decide the same in accordance with law.

Parties are directed to appear before the trial Court on 30.10.2019.

October 16, 2019
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***