

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

Criminal Revision No. 2292 of 2011 (O&M)
Date of decision: May 15, 2020

Shiv Ram and others

...Petitioners

Versus

Sat Pal and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. S.S. Dinarpur, Advocate,
for the petitioner.

Mr. Dharminder Sigh, Advocate, for
Mr. Ravinder Malik (Ravi), Advocate,
for respondent No.1.

Mr. Tanuj Sharma, AAG, Haryana,
for respondent No.2.

JAISHREE THAKUR, J.

The petitioner herein was convicted by the trial court under Sections 354, 452 and 323 IPC by judgment dated 22.8.2009. Aggrieved against his conviction, the petitioner filed an appeal before the Additional Sessions Judge, Yamuna Nagar. During the pendency of the appeal, the petitioner filed an application under Section 391 of the Code of Criminal Procedure for leading additional evidence by producing a certified copy of a petition (being Criminal Misc. 8171-M of 1997) filed by the complainant—respondent No.2 under Section 438 of the Code of Criminal Procedure before this Court seeking anticipatory bail in FIR No. 89 dated 4.4.1997 registered under Sections 494, 332, 352 and 342 IPC at Police Station Sadar

Jagadhri, in which the complainant, his brother and others were accused. By leading additional evidence, the petitioner wanted to establish that the facts mentioned in the petition (Criminal Misc. 8171 M of 1997) are entirely different and contradictory to the allegations levelled against the petitioner in the instant case. The application was contested by the complainant/respondent No.2 and the lower appellate court, while observing that production of the said petition is not at all necessary for proper adjudication of the appeal, dismissed the application by order dated 13.9.2011. Aggrieved against the said order, the instant revision has been filed.

The allegations in brief were that on 3.4.1997 at about 9 p.m. the petitioner, along with one Shishpal, entered the house of the complainant in his absence and misbehaved with his wife Kailasho Devi. When she objected to their forcible entrance in the house, they caught hold of her by hand and tried to outrage her modesty. In the meanwhile, the complainant happened to visit his house and was stunned to see the accused. On his asking the accused about the purpose of visit to his house during night hours, the accused gave fist, slaps, leg and danda blows to them. They also snatched the gold chain (weighing two tolas) of the complainant from his neck. On the basis of the allegations so made, the trial was set on motion and the petitioner was convicted as noticed above.

Learned counsel for the petitioner, while assailing the impugned order, submits that the Additional Sessions Judge has erred in law in not allowing the application for producing the documents as sought for.

He submits that in fact the petitioner, who was posted as a Constable, had

lodged a FIR No. 89 dated 4.4.1997 under Sections 394, 332, 353, 342 IPC at Police Station Sadar Jagadhri against the complainant—Satpal @ Palla, Bishna Ram, Satpal Ram Parkash and Tilak Raj. It was alleged therein that he had received information that Sat pal (complainant in the instant case) is in possession of illegal liquor and if a raid is conducted the same can be recovered. When, he along Head Constable Shishpal, chased the complainant and other persons, they were manhandled and so much as they were inflicted with lathi blows etc. they ran away from the spot. It is further submitted that the instant complaint was nothing but a as a counter-blast to the FIR lodged by the petitioner. Learned counsel further submits that the complainant and his co-accused, while seeking anticipatory bail from this Court had stated in the petition, that on 3.4.1997 the police of Police Station Sadar Jagadhri forcibly entered and searched the whole house of the complainant and misbehaved with the lady members. It is mentioned in para 3 of the complaint that the police was constantly harassing the complainant and were arresting him in a false case of sale of liquor from time to time, but there is no allegation of outraging the modesty of the wife of the complainant by the petitioner. Therefore, production of the petition (seeking anticipatory bail from this court) was necessary to be produced by way of additional evidence to show that contradictory pleas taken by respondent No.2/complainant, which has resulted into conviction of the petitioner. In support of his contentions, he relies upon the judgments rendered in **Avtar Singh Versus State of Punjab 2018 (2) R.C.R. (Criminal) 21** and **Brig. Sukhjeet Singh (Retd.) MVC Versus The State of Uttar Pradesh and others 2019 (1) R.C.R. (Criminal) 895.**

Per contra, learned counsel appearing on behalf of the respondents submit that the application so moved by the petitioner under Section 391 of the Code of Criminal Procedure has rightly been dismissed for the reasons that the contents of the petition filed under Section 438 of the Code of Criminal Procedure were very well within the knowledge of the petitioner at the time of leading evidence before the trial court, but he did not do so. Not only this, the petitioner availed 25 effective opportunities for leading defence evidence which was ultimately closed on 21.8.2009. Therefore, no interference is called for in the revision by this Court.

I have heard learned counsel for the parties and have also perused the documents annexed with the revision.

There is no dispute with the proposition of law that under Section 391 of the Code of Criminal Procedure, a wide discretion is conferred with the Appellate Courts to allow additional evidence if it is necessary and goes to the root of the case. However, in the present case, as is evident from the record, that the contents of the petition filed by the respondent/complainant under Section 438 of the Code of Criminal Procedure in this Court, were very well within the knowledge of the petitioner at the time of leading evidence before the trial court, but he did not produce the same for the reasons best known to him. Apart from that, it is also matter of record that the petitioner availed 25 effective opportunities for leading evidence in defence, yet he failed to produce the document which is now sought to be produced. No reasons are coming forth as to what prevented the petitioner to produce the petition in evidence during the trial.

The lower appellate court has rightly dismissed the application and there is

no illegality or irregularity committed by the court below while passing the impugned order.

For the reasons afore-stated, the instant revision is dismissed being devoid of merit.

However, before parting with the judgment, it is imperative to observe that this case is hanging fire in this Court since 2011, which has delayed disposal of the appeal by the lower appellate court for a considerable time. A perusal of the record shows that during the pendency of the revision, even the matter was referred to the Mediation and Conciliation Centre of this Court but no consensus arrived at between the parties. Under the circumstances, the lower appellate court is directed to dispose of the appeal expeditiously, preferably within a period of three months from the date of receipt of a copy of this judgment.

May 15, 2020

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No