

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

Date of decision: 02.03.2020

(i) CRM-M-45163-2016

Sanjeev Goyal and anotherPetitioners

Versus

Gagan GoyalRespondent

(ii) CRM-M-45237-2016

Sanjeev GoyalPetitioner

Versus

Hira Lal Goyal and anotherRespondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Ms. Deepali Puri, Advocate
for the petitioner.

Mr. Viren Jain, Advocate
for respondent No.1 in CRM-M-45237-2016 and
for respondent in CRM-M-45163-2016

Mr. Sandeep Singh Deol, D.A.G., Punjab
for respondent No. 2 in CRM-45237-2016.

ARUN KUMAR TYAGI, J

This order disposes of CRM-M-45163-2016 titled Sanjeev Goyal and another Vs. Gagan Goyal and CRM-M-45237-2016 titled as Sanjeev Goyal Vs. Hira Lal Goyal and another as the same have arisen out of common order and involve common questions of facts and law.

2. The petitioner has filed above-said petitions under Sections 482 and 483 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for setting aside order dated 17.11.2016 (**Annexure P-4**)

passed by learned Additional Sessions Judge, Ludhiana in ***Criminal Appeal No.55 of 2012 titled as 'Sanjeev Goyal Vs. Gagan Goyal'*** and ***Criminal Appeal No.422 of 2012 titled as 'Hira Lal Goyal Vs. State of Punjab'***, whereby application filed by the petitioner/complainant under Section 391 of the Cr.P.C. for allowing him to produce on record material documents by way of additional evidence for proper adjudication of the matter was disposed of.

3. Briefly stated, the facts giving rise to the filing of the present petition are that on 10.10.2001 when Basisth Dubey was present at kothi 5/1 of complainant Sanjeev Goyal and construction of kothi No.5/1 and 5/4 the Mall, Ludhiana was in progress. At about 2:00 p.m. accused Hira Lal Goyal accompanied by 3 unidentified persons trespassed and gave beatings to him and two labourers Tilak Raj and Ram Kewal, criminally intimidated them and asked them to stop the construction. On being informed two police officials came from the Police Station but they first visited accused Hira Lal Goyal and then came to them and recorded his statement in Punjabi and instead of protecting them asked him to stop construction. Basisth Dubey sent telegram to SHO, Police Station, Division No.5, Ludhiana, Senior Superintendent of Police, Ludhiana and D.I.G. Ludhiana range Ludhiana in this regard. Thereafter on 11.10.2001, Hira Lal Goyal accompanied by his sons Amit Goyal and Gagan Goyal, Sukhdev Singh and Gurdial Singh forcibly entered into Kothi No.5/1 the Mall Ludhiana and demolished a portion of the boundary wall and threatened Bashisht Dubey, Bindeshwari and Rajesh with dire consequences.

Representation in this regard was given to DIG and IG, Ludhiana personally and was also sent by registered post. On 13.10.2001 at about 10.00 P.M., Hira Lal Goyal and his sons Amit Goyal and Gagan Goyal, who were standing on the first floor of their residence, threatened Bashisht Dubey and Bindeshwari, who went to the backyard of kothi No.5/11 and 5/4 the Mall, Ludhiana for pouring water on newly constructed boundary wall, that they shall get their limbs broken if they did not discontinued pouring the water. Since they continued pouring water accused Hira Lal Goyal and both his sons started throwing brick bats on them and they have to save themselves by running into the house. Accused Hira Lal Goyal and his sons asked them to vacate the premises by evening and threatened to wipe them out from the world if they failed to do so. FIR No.426 dated 14.10.2001 was registered under Sections 477 and 506 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC') at Police Station Division No.5, Ludhiana. The police investigated the case and on completion of investigation filed report under Section 173 (2) of the Cr.P.C. against accused Hira Lal Goyal and his sons Amit Goyal and Gagan Goyal. Amit Goyal died during trial. On trial accused Hira Lal Goyal was convicted and sentenced under Sections 447 and 506 of the IPC while accused Gagan Goyal was acquitted of the charges by learned Additional Chief Judicial Magistrate, Ludhiana vide judgment dated 16.07.2012.

4. Accused-Hira Lal Goyal filed ***Criminal Appeal No.422 of 2012 titled as 'Hira Lal Goyal Vs. State of Punjab'*** against his conviction and complainant Sanjeev Goyal filed ***Criminal Appeal***

No.55 of 2012 titled as 'Sanjeev Goyal Vs. Gagan Goyal' against acquittal of accused-Gagan Goyal. During pendency of the appeals, complainant Sanjeev Goyal filed application under Section 391 of the Cr.P.C. for permission to produce documents by way of additional evidence. The application was opposed by accused Hira Lal Goyal and Gagan Goyal in terms of reply filed. On hearing learned Counsel for the parties, learned Additional Sessions Judge, Ludhiana passed impugned order dated 17.11.2016 that the additional evidence cannot be allowed in order to fill up the lacuna and the documents sought to be produced by the complainant may be placed on the file but the exhibition thereof will be seen at the time of final arguments and disposed of the applications in both the above-said appeals by above-said common order accordingly.

5. Feeling aggrieved, complainant Sanjeev Goyal has filed the present petitions.

6. I have heard learned Counsel for the parties and perused the relevant record.

7. Ms. Deepali Puri, learned Counsel for the petitioner has argued that the documents in question showing the possession of the petitioner over the house in question are essential for just and proper decision of the case and permitting the petitioner to produce the same by way of additional evidence would serve the ends of justice. The impugned order passed by learned Additional Sessions Judge, Ludhiana is contradictory as on the one hand he has held that the documents could not be allowed to be produced to fill up the lacuna and declined

the exhibiting of the same while on the other hand he has allowed the petitioner to place the documents on record and ordered that exhibition thereof will be seen at the time of arguments and the impugned order suffers from material illegality. The petitioner will suffer grave injustice in case the petitioner is not allowed to produce the documents in question by way of additional evidence. Therefore, the impugned order may be set aside and the applications for additional evidence may be allowed. In support of her arguments learned Counsel for the petitioner has placed reliance on the observations in *Ashok Tshering Bhutia Vs. State of Sikkim (SC) : 2011 (2) R.C.R. (Criminal) 99*.

8. Mr. Sandeep Singh Deol, learned State Counsel has endorsed the arguments of the learned Counsel for the petitioner.

9. On the other hand, Mr. Viren Jain, learned Counsel for respondents Hira Lal Goyal and Gagan Goyal has argued that application for producing additional evidence has been filed at a belated stage and the documents in question could not be allowed to be produced to fill up the lacuna. Further, the provisions of Section 391 of the Cr.P.C. are similar to provisions of Order 41 Rule 27 of the Code of Civil Procedure, 1908. The application for producing additional evidence has to be heard at the time of final hearing of the appeal when after appreciating the evidence on record the court reaches a conclusion as to whether additional evidence was required to be taken on record in order to pronounce the judgment or for any other substantial cause. The impugned order for consideration of the documents at the time of final hearing of the appeal does not suffer from any material illegality.

Therefore, the petitions may be dismissed. In support of his arguments learned Counsel for respondents Hira Lal Goyal and Gagan Goyal has placed reliance on the observations in ***Union of India Vs. Ibrahim Uddin (SC) : 2012 (4) R.C.R. (Civil) 727.***

10. Section 391 of the Cr.P.C., which empowers the Appellate Court to take further evidence or direct it to be taken, reads as under:-

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 Sessions 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.”*

11. In ***Ashok Tshering Bhutia v. State of Sikkim (SC) : 2011 (2) R.C.R. (Criminal) 99*** Hon'ble Supreme Court observed as under:-

“15. Additional evidence at appellate stage is permissible, in case of a failure of justice. However, such power must be exercised sparingly and only in exceptional suitable cases where the court is satisfied that directing additional evidence would serve the interests of justice. It would depend upon the facts and circumstances of an individual case as to whether such permission should be granted having due regard to the concepts of fair play, justice and the well-being of society. Such an application for taking additional evidence must be decided objectively, just to cure the irregularity. The primary object of the provisions of Section 391 Criminal Procedure Code is the prevention of a guilty man's escape through some careless or ignorant action on part of the prosecution before the court or for vindication of an innocent person wrongfully accused, where the court omitted to record the circumstances

*essential to elucidation of truth. Generally, it should be invoked when formal proof for the prosecution is necessary. (Vide **Rajeswar Prasad Misra v. The State of West Bengal & Anr.**, AIR 1965 Supreme Court 1887; **Ratilal Bhanji Mithani v. The State of Maharashtra & Ors.**, AIR 1971 Supreme Court 1630; **Rambhau & Anr. v. State of Maharashtra**, 2001(2) R.C.R.(Criminal) 721 ; **Anil Sharma & Ors. v. State of Jharkhand**, 2004(3) R.C.R.(Criminal) 774 : 2004(3) Apex Criminal 337 ; **Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat & Ors.**, 2004(2) R.C.R. (Criminal) 836 : 2004(3) Apex Criminal 46 : (2004)4 SCC 158; and **Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)**, 2010(2) R.C.R. (Criminal) 692 : 2010(3) R.A.J. 1 .*

16. This Court in **State of Gujarat v. Mohanlal Jitmalji Porwal & Anr.**, AIR 1987 Supreme Court 1321, dealing with the issue held as under :

"...To deny the opportunity to remove the formal defect was to abort a case against an alleged economic offender. Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona-non-grata whose cause may be treated with disdain. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....."

17. In **Rambhau (supra)**, a larger Bench of this Court held as under :

"Incidentally, Section 391 forms an exception to the general rule that an Appeal must be decided on the evidence which was before the Trial Court and the powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice. Be it noted further that the

doctrine of finality of judicial proceedings does not stand annulled or affected in any way by reason of exercise of power under Section 391 since the same avoids a de novo trial. It is not to fill up the lacuna but to subserve the ends of justice. Needless to record that on an analysis of the Civil Procedure Code, Section 391 is thus akin to Order 41, Rule 27 of the C.P. Code." (Emphasis added)

18. In view of the above, the law on the point can be summarised to the effect that additional evidence can be taken at the appellate stage in exceptional circumstances, to remove an irregularity, where the circumstances so warrant in public interest. Generally, such power is exercised to have formal proof of the documents etc. just to meet the ends of justice. However, the provisions of Section 391 Criminal Procedure Code cannot be pressed into service in order to fill up lacunae in the prosecution's case."

12. In ***Asim @ Munmun @ Asif Abdul Karim Solanki Vs.***

State of Gujarat : 2020 (1) R.C.R. (Criminal) 977 application under

Section 391 of the Cr.P.C. was disposed of by High Court of Gujarat

vide order dated 10.04.2019 while observing that appellant is at liberty

to submit an appropriate application at the time when the appeal is

finally heard by relying on the judgment of Hon'ble Supreme Court in

Union of India Vs. Ibrahim Uddin (SC) : 2012(4) RCR (Civil) 727.

On appeal it was held by Hon'ble Supreme Court that the application

for additional evidence has to be heard immediately after it is filed

without awaiting to the appeal to be finally heard. Hon'ble Supreme

Court observed in para 3 of its judgment as under:-

"Section 391 of the Cr.P.C. does not impose any restriction as to when the application filed for adducing additional evidence should be heard by the High Court. In fact, we are of the opinion that it is desirable that an application filed under Section 391 should be heard immediately after it is filed without waiting for the appeal to be finally heard."

13. In view of the above-referred judgment of Hon'ble Supreme Court, argument of learned Counsel for respondents Hira Lal Goyal and Gagan Goyal as to application for additional evidence being liable to be heard at the time of final hearing of the appeal is devoid of any merit and the order passed by learned Additional Sessions Judge, Ludhiana disposing of the application allowing the petitioner to place the documents on record with the rider that the question of exhibition thereof will be considered at the time of final hearing of the appeal suffers from material illegality. The impugned order also suffers from the vice of illegality due to the contradiction of the Court recording its considered view that at the appellate stage of the case additional evidence could not be allowed in order to fill up lacuna in the prosecution case while allowing the documents to be placed on the file with the rider that the exhibition thereof, if any, will be seen at the time of final arguments. The impugned order is, therefore, liable to be set aside by this Court in exercise of powers under Section 482 of the Cr.P.C. for securing the ends of justice.

14. In the present case, respondents Hira Lal Goyal and Gagan Goyal had taken the stand that the complainant is not in exclusive possession of property No.5/1, The Mall, Ludhiana. The petitioner claimed in the applications that Criminal Case No.24 dated 27.01.1994, RBT No.854A of 04.07.2005 was got registered by Hira Lal Goyal against complainant Sanjeev Kumar Goyal and his brother Rakesh Kumar Goyal admitting possession of Sanjeev Kumar Goyal on Kothi No.5/1, The Mall, Ludhiana and in that case complainant Sanjeev

Kumar Goyal and Rakesh Kumar Goyal were acquitted vide judgment dated 02.12.2005 by learned Chief Judicial Magistrate, Ludhiana and that respondent Hira Lal Goyal filed Criminal Revision No.1393 of 1999 titled as H.L. Goyal Vs. Sat Parkash and others before the High Court wherein he admitted possession of complainant-Snajeew Kumar Goyal and his family over Kothi No.5/1, The Mall, Ludhiana. The petitioner wants to produce the documents of these cases and passports issued in the name of complainant and his son by way of additional evidence under Section 391 of the Cr.P.C. to prove his possession over the above-said property. The documents in question are documents of public nature, undoubted origin and authenticity. Production of the documents which are relevant for proving the claim of the claimant as to his possession over Kothi No.5/1, The Mall, Ludhiana is essential for just and proper decision of the case.

15. In ***Rajendra Prasad Vs. The Naracotic Cell through its Officer-in-charge Delhi : 1999(3) RCR (Criminal) 440***, Hon'ble Supreme Court explained that lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified.

16. In *Shailendra Kumar Vs. State of Bihar, 2002(1) SCC 655*, it was held by the Hon'ble Supreme Court that a bare reading of Section 311 of the Cr.P.C. reveals that it is of very wide amplitude and if there was any negligence, latches or mistake by not examining material witnesses, the Court's function to render just decision by examining such witnesses at any stage is not, in any way, impaired.

17. The additional evidence sought to be produced by the petitioner in the appeals is necessary for just and proper decision of the case. No prejudice will be caused to the respondents Hira Lal Goyal and Gagan Goyal if the applications are allowed as respondents Hira Lal Goyal and Gagan Goyal will get opportunity to cross-examine the witness, if any, examined and rebut the additional evidence produced.

18. In these facts and circumstances, the petitions are allowed, impugned order is set aside, applications for additional evidence are allowed and the petitioner is allowed to produce the documents in question in both the appeals by way of additional evidence by summoning and examining concerned witnesses.

02.03.2020
kavneet/kothiyal

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No