

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 712 of 2019

- Bhojraj Narwani S/o Late Lakkhumal Narwani, Aged About 48 Years, R/o Chatapara, Behind the Main Post Office, Police Station Civil Lines, Tahsil and District Bilaspur Chhattisgarh.....(Complainant), District : Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Shivkumar Chandra, S/o Awadhram Chandra, Aged About 49 Years, Assistant Sub-Inspector, District Police Force, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Dhanesh Sahu, S/o Late C.R. Sahu, Aged About 43 Years, Head Constable, District Police Force, Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
3. Brajesh Singh, S/o Late M.L. Thakur, Aged About 46 Years, Constable, District Police Force, Bilaspur, Tahsil and District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh(Accused)

----Respondents

For Petitioner – Shri Vipin Punjabi, Advocate.

For Respondents – Shri R.S. Marhas, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

20-09-2021

1. This petition has been brought being aggrieved by the order dated 21-08-2019 passed by the VIth Additional Sessions Judge Bilaspur, Chhattisgarh in Criminal Appeal No.279/2018 by allowing the application filed by respondents/appellants under Section 391 of the Cr.P.C.

2. The petitioner is complainant in the complaint filed by him which was registered as Complaint Case No.4857/15. The trial Court has convicted the respondents for charges under Section 294, 323/34, 451 of the IPC and sentenced them with imprisonment and fine. The respondents have preferred Criminal Appeal No.279/2018. The respondents filed application praying that they have obtained some documents under Right to Information Act. It is on that ground prayer was made that the investigating Officer is required to be examined, therefore, the prayer was made for taking further evidence in the

case. The learned appellate Court has passed the impugned order from which the petitioner is aggrieved.

3. It is submitted by learned counsel for the petitioner that the impugned order is erroneous, illegal and unsustainable. Reliance has been placed on the judgment of Hon'ble the Supreme Court in the matter of **Ashok Tshering Bhutia Vs. State of Sikkim**, AIR 2011 Supreme Court 1363, in which it is held that additional evidence at appellate stage is permissible only in case where there is failure of justice, therefore, 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.

Reliance has also been placed on the judgment of Madhya Pradesh High Court in the case of **Bhuru Vs. State of M.P.**, 2019 (I) MPJR 128, in which it is held that by filing the application under Section 391 of the Cr.P.C. the appellant is also required to prove that the additional evidence is essential for just decision of the appeal.

It is submitted that the respondents have not brought any evidence to show that the additional evidence they were seeking to bring on record was essential for just decision of the appeal. Therefore, the impugned order suffers from grave infirmity, which is liable to be set aside.

4. Learned counsel for the respondents opposes the submission made by learned counsel for the petitioner and submits that the impugned order is proper and sustainable. Objection has been raised on the maintainability of the present petition as the same could have been challenged by the petitioner by filing criminal revision before the High Court under Section 397 of the Cr.P.C. Therefore, the petition may be dismissed.

5. Heard learned counsel for the parties and perused the documents.

6. The learned appellate Court has observed in the impugned order that

the documents filed at the appellate stage are prima facie relevant and important and that the additional evidence proposed passes the test as laid down by Hon'ble the Supreme Court in the case of Ashok Tshering Bhutia Vs. State of Sikkim (supra) and on that basis the application was allowed.

The petition before this Court has been brought under Article 227 of the Constitution of India and therefore, this Court will not exercise jurisdiction as a revisional Court under Section 397 of the Cr.P.C. For exercising supervisory jurisdiction the Court has limited power to see that the inferior Court has functioned within the limits of its authority or not and this jurisdiction cannot be exercised to correct an error apparent on the face of the record, much less an error of law, as it has been held by Hon'ble the Supreme Court in the matter of **Mohd. Yunus Vs. Mohd. Mustaqim and others**, (1983) 4 SCC 566 and in numbers of other cases. Hence, in the present case the appellate Court had the authority to consider the application under Section 391 of the Cr.P.C. and that authority has been exercised accordingly. Legality, correctness and propriety of that order cannot be considered in the supervisory jurisdiction. Therefore, the present petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge