

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-8448-2021
Date of Decision: 23.02.2021

Kashmir Singh

....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Tejinder Pal Singh, Advocate, for the petitioner.

HARNARESH SINGH GILL, J.

Case is taken up for hearing through Video Conferencing.

Challenge in the present petition is to the order dated 10.02.2020 (Annexure P.13) passed by the learned Sessions Judge, SBS Nagar, whereby an application under Section 391 Cr.P.C. filed by the petitioner, was dismissed.

Learned counsel for the petitioner argues that while passing the impugned order, the learned Appellate Court has failed to take into consideration that the documents Mark-A, Mark-B, Mark-D and Mark-F sought to be proved by way of additional evidence, were just and proper for the adjudication of the appeal pending before it. It is further submitted that no prejudice of any kind ought to have been caused to respondent No.2 in case the application filed by the petitioner was allowed, for the reason that the said documents were only in respect of

the payment of an amount of Rs.4,30,000/- paid by the petitioner to respondent No.2. Still further, it is argued that the petitioner had also sought to prove by way of the additional evidence the compromise deed dated 25.06.2013 effected between the petitioner and respondent No.2, pursuant whereof respondent No.2 had received an amount of Rs.4,30,000/- from the petitioner as a full and final payment of his claim. It is yet further submitted that once the intentions of respondent No.2 had turned dishonest during the trial and he had concealed the factum of the compromise, leading additional evidence was the only course left with the petitioner. However, such legal aspect of the matter was totally brushed aside by the learned Appellate Court.

I have heard the learned counsel for the petitioner and have also gone through the impugned order passed by the Appellate Court.

The learned Appellate Court, while passing the impugned order, has held that that the documents (four demand drafts), were already part of the record before the trial Court in the form of Mark-A, Mark-B, Mark-D and Mark-F and thus, there was no justification in granting the prayer of the petitioner. The concluding part of the impugned order would read as under:-

“In the instant application, the applicant simply wants to prove the draft No.784115 dated 08.07.2013 of PNB, draft No.784112 dated 06.07.2013 of PNB, draft No.784105 dated 24.05.2013 of PNB and draft no.184819 of PNB. Record reveals that the present applicant/appellant before the learned trial Court in his defence evidence has also tendered these drafts as Mark-A,

Mark-B, Mark-D and Mark-F. So, when the above mentioned drafts have already been tendered by the present applicant/appellant vide order dated 12.10.2017 in his defence and the above evidence has already been considered and appreciated by the learned trial Court, as such, this Court feels that now again the applicant/appellant cannot be permitted to prove the above mentioned documents by way of additional evidence. The application being merit less, the same is hereby dismissed”.

Section 391 Cr.P.C. deals with the power of the Appellate Court to take further evidence or direct it to be taken if it thinks additional evidence to be necessary. Thus, what is provided is that it is within the domain of the Appellate Court to consider if and whether the additional evidence is necessary and it cannot be as a matter of right. It is a Rule that the evidence is to be led before the trial Court and allowing the additional evidence to be led at the appellate stage is only an exception, that too when such evidence was and/or could not be produced before the trial Court despite due diligence on the part of the person seeking to lead such evidence.

However, a perusal of the impugned order makes it clear that the documents sought to be produced by way of additional evidence, were already part of the trial Court record as Mark-A, Mark-B, Mark-D and Mark-F. Thus, when such documents are already on record, the same can always be relied upon and referred to.

Yet further, it could not be pointed out by the learned counsel for the petitioner as to what prevented the petitioner from producing and proving the aforesaid documents before the

trial Court in the form of the Exhibits. Remaining silent during the trial proceedings and waking from the slumber at the appellate proceedings, is of no help to the cause pleaded and thus, the petitioner cannot be allowed to maintain the application under Section 391 Cr.P.C. The stand taken by the petitioner in the application under Section 391 Cr.P.C, that the previous counsel for the petitioner did not diligently put the correct defence nor cross-examined the complainant and that the documents were not proved as per law, seems to be an afterthought.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

However, it is made clear that the Appellate Court shall decide the appeal pending before it on merits, uninfluenced by the observations made above.

23.02.2021
ds

(HARNARESH SINGH GILL)
JUDGE

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