

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

CRR-772-2019(O&M)

Date of decision:-19.4.2021

Seema Gupta

...Petitioner

Versus

Vijay Kumar Singla

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Abhilaksh Grover, Advocate
for the petitioner.

Mr.P.S. Ahluwalia, Advocate
for the respondent.

H.S. MADAAN, J.

Case taken up through video conferencing.

This revision petition is directed against the order dated 18.3.2019 passed by Additional Sessions Judge, Hisar vide which such Court had dismissed an application under Section 391 Cr.P.C. filed by appellant/accused Seema Gupta for additional evidence. The revisionist Seema Gupta prays that the revision petition be accepted, the impugned order be set aside and her application for additional evidence be allowed.

Briefly stated, the facts of the case are that complainant Vijay Kumar Singla had filed a complaint under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the Act)

against accused Chander Parkash Gupta and his wife Seema Gupta (present petitioner), both residents of VPO Jewra, District Hisar, on the allegations that complainant along with both the accused had been partners/members in Manav Nirman Samiti, VPO Jewra, District Hisar, running educational institutions in the name and style of Manav Institute; subsequently differences arose between the parties and they decided to part ways; an agreement took place between them to settle the accounts regarding the assets and liabilities of Manav Nirmal Samiti; the total worth of the institution was calculated to be 9.21 crores; another agreement was arrived at between the parties on 23.7.2010; the complainant was found entitled to get Rs.1,17,92,307/- and Rs.23,58,461/- from the accused; again another compromise was arrived at between the parties on 9.10.2012; the accused in order to discharge their financial liability towards the complainant had issued an account payee cheque bearing No.088559 dated 11.4.2014 drawn on SBI Old Anaj Mandi Road, Opposite Sushila Bhawan, Hisar in the sum of Rs.75 lakhs from their account in favour of the complainant; the complainant had presented the cheque for encashment through his banker i.e. SBI, New Grain Market Branch, Hisar but it was returned uncashed for the reason of insufficiency of funds in the account of accused on 15.4.2014; the complainant served legal notice dated 23.4.2014 upon the accused within 15 days of receipt of information from the bank calling upon the accused to make payment of the cheque amount but to no effect, as such he had brought complaint under Section 138 of the Act against both the accused.

After institution of complaint, the complainant led

preliminary evidence. Thereafter, the accused were summoned to face trial, notice of accusation was served upon them . On completion of trial vide judgment dated 10.10.2017, Judicial Magistrate Ist Class, Hisar convicted both the accused for the offence under Section 138 of the Act and vide order dated 11.10.2017 sentenced them to undergo imprisonment for a period of two years and to pay double of the cheque amount. Further the accused/convicts were directed to pay the compensation of Rs.one crore, fifty lakh (Rs.1,50,00,000/-) to the complainant, as the complainant has not only suffered loss due to the action of accused by way of losing interest on the amount of cheque, but also incurred an expenses in pursuing the present complaint. However, the amount of compensation would be payable to the complainant in case of this order attaining finality, after decision of the appeal/revision, if any.

Feeling aggrieved, the accused had filed an appeal before the Court of Sessions, which was assigned to Additional Sessions Judge, Hisar, during the Course of which appellant/accused Seema Gupta had moved an application under Section 391 Cr.P.C. for additional evidence contending that her alleged signatures on the cheque in question were forged; though she had taken a specific plea in that regard before the trial Court and the complainant had examined Sh.Yashpal Chand Jain, Handwriting and Finger Prints Expert as PW3, who had stated that such signatures were genuine; that she had examined Sh.Devender Prasad, Handwriting and Finger Prints Expert in her defence evidence as DW6, who had deposed that signatures on the cheque in question were forged and do not belong to accused Seema Gupta, therefore, two conflicting

expert opinions came out to be there and for just decision of the case, it is necessary to send the cheque to FSL, Madhuhan, Karnal or any other designated State or Central Forensic Science Laboratory to give opinion in that regard.

The said application was opposed by the complainant tooth and nail contending that report of the expert examined by accused Seema Gupta was based on inadmissible document being photocopy, as such was not accepted by the trial Court and the application had been filed to delay the proceedings in the case inasmuch as the appeal was filed in the year 2017, whereas the application was moved on 8.3.2019.

Learned Additional Sessions Judge, Hisar after hearing counsel for the parties, referring to the case law cited by them had dismissed the application mainly on the following grounds:

- (i) that in para No.5(x) of the appeal itself, appellant has mentioned that she reserve her right of additional evidence during pendency of the appeal by filing an application under Section 391 Cr.P.C., meaning thereby applicant/appellant was having the knowledge of the factum of moving application but no such application was filed in the Court prior to 8.3.2019, despite the fact that the appeal had been filed on 7.11.2017, but the application was filed after expiry of 1 ½ years and as per settled proposition of law power under Section 391 Cr.P.C. can be exercised sparingly only in suitable cases, where there is failure of justice and where it is justified and such exercise should not be done in such a way as to cause prejudice to the other party;

(ii)that in the trial Court both the parties had examined expert witnesses, however, the trial Court vide judgment of conviction and sentence had rejected the opinion of the expert witness examined by the accused for the reason that he had taken signatures of accused from photocopy of document for comparison, which was inadmissible in evidence and filing of the instant application was an attempt to fill up the lacuna in her case which could not be allowed as per law;

(iii)that the motive for filing application appeared to be to stretch and prolong the proceedings without any justification, which could not be allowed.

As such, the application in question was dismissed.

Feeling dissatisfied with the order passed by Additional Sessions Judge, Hisar, petitioner/accused has filed the instant revision petition. Notice of the revision petition was issued to the respondent/complainant, who appeared through counsel.

I have heard learned counsel for the parties besides going through the record.

The application moved by the petitioner accused does not fall within four corners of Section 391 Cr.P.C., which provides that in dealing with any appeal under the 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. Obviously, it is for the Appellate Court to decide whether

additional evidence is necessary or not. A litigant can certainly be not allowed to take decision himself whether additional evidence is necessary or not and in garb thereof filling up lacuna in his case.

As has been pointed out by the learned counsel for the respondent complainant, though it is a case of two sides examining document experts giving favourable reports to the respective party. But as a matter of fact the report of the expert examined by the accused had been rejected, whereas report of the expert examined by the complainant side had been relied upon. It being so, there is no occasion for sending the cheque to Forensic Science Laboratory, Madhuban, Karnal, to determine genuineness of the signatures purportedly appended by the petitioner Seema Gupta thereon.

Furthermore, in the reply sent by the accused through their counsel to the legal notice got served by the complainant upon the accused before filing of complaint under Section 138 of the Negotiable Instruments Act, copy of which has been placed on record by the complainant as Annexure R-1, it is alleged that blank signed cheques kept by the accused in the office of Manav Nirman Samiti, including the cheque in question had been stolen by the complainant, who had got the date, amount and his name written and filled in the cheque in question and then presented it to the bank for encashment. Thus it comes out that complainant had not disputed signatures of the petitioner-accused Seema Gupta on the cheque in question. It being so, there is no reason to send the cheque to Forensic Science Laboratory, Madhuban, Karnal, for analysis.

The respondent-complainant has further attached copy of

judgment passed in Revision petition challenging order passed in criminal complaint filed by the husband and co-accused of the present petitioner Dr. Chander Parkash, against complainant Vijay Kumar Singla. In the Revision petition the order dated 9.5.2016 passed by JMIC, Hisar, dismissing the complaint of the complainant – revisionist had been challenged. A perusal of this judgment copy Annexure R-4 goes to show that the revision petition against dismissal of the complaint for non-prosecution due to absence of complainant or his counsel had been dismissed. Thus, taking the things from any angle, no ground was there to accept the application under Section 391 Cr.P.C. filed by the appellant-accused Seema Gupta and it was rightly dismissed by the learned Additional Sessions Judge, Hisar.

The impugned order passed by Additional Sessions Judge, Hisar is detailed and well reasoned. The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the order passed by a Court below or the same is perverse and not otherwise. The impugned order does not appear to be suffering from any illegality or infirmity much less apparent on the face thereof. There is no reason to interfere with the impugned order by way of exercising the revisional jurisdiction.

Finding no merit in the revision petition, the same stands dismissed.

19.4.2021

Brij

Whether reasoned/speaking

Whether reportable

: Yes/No
: Yes/No

(H.S.MADAAN)
JUDGE