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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 24.09.2021

1. CRR No.743 of 2021 (O&M)

Kaka Chopra

....Petitioner

Versus

Sripal Singh Yadav

....Respondent

2. CRR No.733 of 2021 (O&M)

Kaka Chopra

....Petitioner

Versus

Sripal Singh Yadav

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Manoj Kumar Sood, Advocate
for the petitioner.

Mr. S.K. Tripathi, Advocate
for the complainant.

ARVIND SINGH SANGWAN J. (Oral)

On 27.07.2021, the following order was passed (in CRR-743-2021) by this Court:-

“Prayer in this revision petition is for setting aside the order dated 14.07.2021, vide which an application filed by the petitioner before the lower appellate Court for leading additional evidence under Section 391 Cr.P.C. was dismissed.

Learned counsel for the petitioner/accused submits that while challenging the judgment of conviction and order of sentence dated 16.02.2018 and 17.02.2018, respectively, the petitioner filed an application under Section 391 Cr.P.C. (Annexure P-3) for examination of a witness to prove a document Mark 'A', which is already on record as it was produced before the trial Court while

leading defence evidence.

Learned counsel further submits that the trial Court had declined to rely upon the said document as it was a photocopy and it was observed that the same cannot be read in evidence without examining the attesting witness. It is further submitted that in the application, the petitioner has specifically stated in para 4 that this document clears that the petitioner had not taken any loan from the complainant and rather his brother had taken the money from the complainant and after taking the same, the brother of the petitioner had died so the petitioner had taken the responsibility on behalf of his deceased brother and, therefore, this writing i.e. Mark 'A' is necessary to prove the aforesaid fact that the petitioner has no legal liability or debt to repay the amount, in lieu of which the cheque was issued as it was in fact a security cheque.

Learned counsel further submits that the application was contested by the respondent/complainant on the ground that the same is filed at a delayed stage and just to cover up the lacuna in the evidence. The lower appellate Court dismissed the said application by passing the following order:

“Vide this order, I shall dispose off the miscellaneous application, filed by Ld. Counsel for applicant-appellant under Section 391 Cr.P.C. for examination of an attesting witness to prove document Mark ‘A’.

2. Ld. Counsel for applicant-appellant has contended that Mark ‘A’ is very necessary for proper decision of the present appeal and Ld. Trial court in impugned judgment has also observed about it that it being marked document cannot be read into evidence. So, in order to prove it, applicant-appellant wants to examine its attesting witness. On this point, Ld. Counsel for applicant-appellant has placed reliance upon law laid down in P. Thangavel Vs. Venkatesan Crl. R. C. Nos. 1098 & 1099 of 2011 and M.P. Nos.1 and 1 of 2011 decided on 25.04.2018 by Hon’ble Madras High Court.

3. Ld. Counsel for respondent-complainant has contended that the present application has been filed just to delay the proceedings as the alleged document Mark ‘A’ was in the knowledge of the applicant-appellant at the time of his defence evidence, but he did not prove it as per the provisions of the Indian Evidence Act and contents of Mark ‘A’ is in contravention of the defence of the

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applicant-appellant which he has taken at the time of cross examination of complainant and in his application under Section 315 Cr.P.C.

4. I have considered the submissions of both sides and have perused the file carefully.

5. For the proper adjudication of the instant application, I reproduce, Section 391 of the Code of Criminal Procedure:

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 Session 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.

6. A bare perusal of Section 391 Cr.P.C., reveals that court has power to summon any witness at any stage of the trial including at appellate stage, provided the court is satisfied itself that the testimony of such witness sought to be summoned is essential for proper adjudication of the controversy. On this point, reliance can be placed upon law laid down in Rati Ram Vs. Dhani Ram CRR 1207 of 2016 decided on 29.03.2016, Iqbal Ahmad Vs. State of U.P. and another application under Section 482 No.-3068 of 2020 decided on 06.02.2020 and Ram Bhau and another Vs. State of Maharashtra (2001) 4 SCC-759.

7. At the time of cross examination of respondent-complainant Sri Pal, Ld. Counsel for applicant-appellant did not put the defence which now he wants to introduce by way of proving document mark 'A'. His defence at the time of cross examination of the respondent-complainant was that respondent-complainant took the cheque from the applicant-appellant as security of the amount and he subsequently misused it.

8. Similarly, during pendency of the complaint, Ld. Counsel for the applicant-appellant had filed application

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under Section 315 Cr.P.C. wherein he has also not taken the defence as contained in Mark A and applicant-appellant had taken his defence in para no.3 of the application which is reproduced as under:

That in the judgment passed by the Ld. Trial Court, the Ld. Trial Court specifically mentioned in the judgment on page 7 and para no.15 that the accused also tendered document Mark A in his defence. The said document is a photocopy and the accused also failed to prove the same by examining attesting witness. Hence, Mark A cannot be read into evidence.

8. In view of above discussion, in the considered opinion of this court, Mark 'A' is not necessary for just and proper adjudication of the present appeal and applicant-appellant wants to set up new defence contrary to his earlier defence by way of proving mark 'A'. Therefore, the present application is hereby dismissed. Case is now adjourned to 27.07.2021 for arguments on the appeal."

Learned counsel refers to aforesaid order and submits that it is a totally non-speaking order, reflecting no application of judicial mind. It is further submitted that in the entire order, the lower appellate Court has nowhere observed the nature of document Mark 'A' and only on the basis of the observations made by the trial Court that it is a photocopy and not proved by the attesting witness, the prayer has been declined, though lower appellate Court has referred to provisions of Section 391 Cr.P.C. and some case laws, however, the same is secondary as before forming an opinion whether additional evidence is to be allowed or not, the preliminary consideration is to evaluate and assess the nature of the proposed additional evidence, which is completely missing in the impugned order.

Learned counsel for the petitioner, thus, submits that the impugned order is liable to be set aside as it nowhere reflects the application of a judicial mind.

Notice of motion for 14.09.2021.

To be listed with CRR-7333-2021.

In the meantime, the proceedings before the lower appellate Court shall remain stayed.

Considering the fact that impugned order lacks the art of writing a judicial order, the Director, Chandigarh Judicial Academy, Chandigarh is directed to look into the matter and issue necessary advisory in this regard."

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Counsel for the petitioner has reiterated the arguments raised in the said order.

Counsel for the respondent/complainant could not dispute about the nature of the order passed by the Lower Appellate Court.

Accordingly, this revision petition is allowed; the impugned order dated 14.07.2021 is set-aside and the matter is remitted back to the Lower Appellate Court/Additional Sessions Judge, Faridabad, to re-decide the application under Section 391 Cr.P.C., by passing a speaking order by giving a reference to all the documents; their admissibility in evidence; their relevance to the lis between the parties as well as the settled principles of law.

The Lower Appellate Court is further directed to decide the application under Section 391 Cr.P.C., within a period of 30 days from the date of receipt of certified copy of this order.

Disposed of.

A photocopy of this order be placed on the file of other connected case.

(ARVIND SINGH SANGWAN)
JUDGE

24.09.2021
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No