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

**Criminal Revision No.2330 of 2018(O&M)
Date of Decision: December 09, 2021**

Sumitra Tuteja ...Petitioner

Versus

Vipin Kumar Tiwari and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Naveen S.Bhardwaj, Advocate
for the petitioner.

Mr.Kartar Singh, Advocate
for the respondents.

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HARINDER SINGH SIDHU, J.

Challenge in this petition is to the order dated 06.07.2018 passed by the Ld. Additional Sessions Judge, Faridabad, whereby, the application under Section 391 CrPC for permission to lead additional evidence, filed by the petitioner – accused, was dismissed.

A Criminal Complaint under Section 138 of the Negotiable Instruments Act was filed by Vipin Kumar and Mahender Kumar – respondents against Sumitra Tuteja – petitioner and her husband Hans Raj Tuteja, on account of dishonor of Cheque No.436422 dated 28.04.2011 for Rs.15,00,000/- drawn on Punjab National Bank, Umra Gate, Hansi. The Ld. Judicial Magistrate Ist Class, Faridabad vide judgment and order dated 01.05.2015 convicted the petitioner under Section 138 of the Act and sentenced her to undergo simple imprisonment for a period of six months.

Compensation of Rs.22,50,000/- was to be paid to the respondents within one month from the passing of the order. In default, she was to further undergo simple imprisonment for a period of one month.

The petitioner filed appeal before the Ld. Additional Sessions Judge, Faridabad under Section 374(3) CrPC. During the pendency of the said appeal, the petitioner filed an application under Section 391 CrPC seeking permission to lead additional evidence. In the application it was pleaded that at the time of arguments it had come to notice that an amount of Rs.10,00,000/- had been transferred by the petitioner in the account of the complainant – respondent No.1 in the year 2010. The cheque in dispute dated 20.04.2011 had been used by the complainant six months after the transfer of the amount of Rs.10,00,000/-. It was pleaded by the petitioner (applicant – appellant therein) that the Trial Court had not discussed about the transfer of the said amount through RTGS. Certain other important facts had come to the notice of the petitioner which were very necessary for the just decision of the case. Hence, the petitioner wanted to lead additional evidence by examining following witnesses:

1) *MHC of Police Station Bhawani Khera, district Bhiwani pertaining to record of affidavit dt.21.1.2011 and 24.1.2011 submitted by the complainants and the Daily Dairy Report dated 24.01.2011;*
2) *Concerned official/Clerk from PNB, Umra Gate, Hansi (Hisar), pertaining record of allegedly misplaced cheque No.436422, and cheque No.436423, 436424, 436425 on the basis of which Demand Draft of M/s Tuteja Transport Company prepared in the name of Vipin Kumar Tiwari the complainant;*

3) *Concerned Clerk/official from SBI (previously known as State Bank of Patiala) situated at village and Post Office Jui, Tehsil and District Bhiwani, pertaining account statement reflecting the record of RTGS dt. 24.11.2010 for an amount of Rs.4,50,000/- dated 2.12.2010 for an amount of Rs.4,00,000/- from account No.55115341024 in the name of M/s Shiv Shankar Service Station;*
4) *concerned Clerk/official from State Bank of India, Mini Sect. Faridabad pertaining record of account statement of A/c No.31137359567 in the name of Vipin Kumar Tiwari and Smt. Sandhya Tiwari reflecting the entries of RTGS of Rs.4,50,000/- and Rs.1,50,000/- on dt. 24.11.2010, Rs.4,00,000/- on dt. 2.12.2010 and*
5) *Concerned registry Clerk from office of Sub Registrar, Faridabad, pertaining the record of sale deed bearing document No.15426 dated 24.01.2011 executed by Rituraj in favour of Smt. Usha Rani wife of Mahender Kumar and Smt. Sandhya Kumari wife of Vipin Kumar Tiwari.*

Besides, the petitioner also intended to prove on record certain certified copies of statements of witnesses recorded in some other Court and judgments passed by the said Courts.

The application was contested by the respondent-complainant by contending that the appeal had been pending for three years without any application having been moved. The applicant had availed ample opportunities to lead evidence in defence. It was contended that the application had been filed only to cause delay. Specific reply was given regarding each witness sought to be examined. Regarding MHC of P.S. Bhawani Khera it was stated that he was not required to be examined as the DDR was already on record. The Clerk of PNB was irrelevant as the contention regarding misplacing of the cheque had already been discussed by the Trial Court. The clerk of the SBI was not relevant as the fact of RTGS was already on record and the Statement of Accounts was on record as Mark-A. The concerned Clerk of SBI, Mini Secretariat and Faridabad was not relevant as the fact of RTGS had been discussed by the Trial Court.

The Ld. Additional Sessions Judge noted that as per record the case had remained pending for defence evidence from 12.09.2014 to 28.04.2015. The petitioner had availed more than twelve effective opportunities to lead defence evidence but had not summoned the said witnesses. It was not the case of discovery of a new fact or evidence but the said evidence was in the knowledge of the petitioner since the very inception of the litigation. Moreover, as the documents were already on record, it agreed with the contention of the complainant- respondent that the entire effort of the petitioner was to delay the disposal of the case.

The Court concluded it was not an exceptional case where ends of justice demanded that additional evidence be permitted to be led at the appellate stage. Accordingly, the application was dismissed.

Having heard Ld. Counsel for the parties, I find no infirmity in the impugned order.

The parameters for exercise of power under Section 391 Cr.P.C. are well settled. The primary test is that additional evidence under Section 391 may be taken with an object to appropriately decide the appeal by the appellate court to secure ends of justice. The power is to be exercised sparingly and only in suitable cases. But once such action is justified, there is no restriction on the kind of evidence which may be received.

In this case the DDR, the copies of demand drafts and Statement of Account were already before the trial Court and had been relied upon by the petitioner. There was no reason or justification for allowing the application.

Thus, this petition is dismissed.

December 09, 2021 **(HARINDER SINGH SIDHU)**
gian **JUDGE**

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No