

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

CRR No.903 of 2021
Date of Decision : 14.09.2021

Ashok and another

..Petitioners

Versus

State of Haryana

...Respondents

(Through video conferencing)

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. Akshay Kumar Jindal, Advocate for the petitioners.

Mr. Gaurav Bansal, AAG, Haryana.

Mr. Vivek Salathia, Advocate for the complainant.

Harsimran Singh Sethi, J. (Oral)

The present petition has been filed challenging order dated 27.07.2021 passed by the Additional Sessions Judge, Gurugram whereby, the application filed by the petitioners under Section 391 Cr.P.C for leading the additional evidence has been dismissed.

Learned counsel for the petitioners argues that the said application has wrongly been rejected by the learned Additional Sessions Judge, Gurugram on the ground that the same has been filed by the petitioners after an inordinate delay just to delay the decision in the appeal. Learned counsel for the petitioners further argues that the reasons given by the Court below for rejecting the prayer of the petitioners for leading the additional evidence are contrary to the provisions of the Code of Criminal Procedure as no finding has been recorded by the Court below as to whether the additional evidence sought to be recorded is necessary for adjudication of the appeal or not.

Though, the complainant has not been arrayed as a party in the present petition, but learned counsel for the complainant, who is appearing through video conference submits that the conduct of the petitioners is such that initially he compromised the matter with the complainant and, thereafter, resiled. The witnesses, which the petitioners intend to examine i.e. Krishna Jha, Manager is only for the purpose of establishing the fact that the petitioners were only the transporters of building material, which they received from the said person and was being supplied to the complainant and the similarly situated witness namely, Subh Ram has already been examined by the petitioners, whose testimony has not been found by the trial Court to be such from which the defence of the accused could be proved, hence, examination of a similar witness and that too as additional evidence at this belated stage of appeal is liable to be rejected.

Learned State counsel submits that the appeal has been filed in the year 2019 and the application for leading additional evidence has been filed in 2021, which shows that the intention of the petitioners is only to delay the proceedings and nothing more.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

From the pleadings, it transpires that the petitioners intend to lead the following additional evidence:-

1. Krishan Jha Manager, Krishna Arjun Buildtech Pvt. Ltd, Village Bakrija, Tehsil Narnaud.
2. Registration Clerk DTO office Kothputli.
3. Certified copy of order dated 23.07.2010 and the statement of complainant in the suit be also taken on file.

Learned counsel for the petitioners conceded before this Court that one Shub Ram had already been examined to prove that accused were receiving building material from the said Subh Ram, which was delivered to the complainant and the said evidence was not good enough by the trial Court to prove the defence of the accused.

That being so, a similarly situated witness cannot be treated as necessary evidence to be brought on record, at this stage as the same does come within the ambit of Section 391 of Cr.P.C.

Learned counsel for the petitioners submits that the petitioners give up their claim to examine Krishan Jha, Manager as additional witness but, prays that the other two witnesses i.e Registration Clerk DTO office Kothputli and certified copy of order dated 23.07.2010 and the statement of complainant in the suit be allowed to be brought on record as additional evidence.

Request of the learned counsel for the petitioners for bringing on record the additional evidence by examining registration Clerk, DTO office, Kothputli and also to place on record certified copy of the order dated 23.07.2010 and the statement of the complainant as found to be mentioned in suit be allowed.

The petitioners have already been convicted and even awarded sentence to undergo imprisonment for a period of one year alongwith fine. Where the liberty of a person is involved he/she should be given full opportunity to defend himself/herself so as to secure his/her liberty. The technicalities need not be a hurdle in the way of imparting justice in such a situation. Hence, the petitioners are entitled to avail all the possible remedies available to them to prove their innocence with only a caveat that

the Courts are to ensure that the said liberty is not being misused so as to cause prejudice to someone else.

In the present case, no prejudice will be caused to anyone in case, the petitioners are allowed to examine Registration Clerk, DTO office, Kothputli and also to place on record certified copy of the order dated 23.07.2010 and the statement of the complainant in the said suit by granting one opportunity. It is made clear that only one opportunity will be given to the petitioners to bring on record the said additional evidence. Respondents will also be given opportunity to cross-examine the said witnesses and that too only on the date when the said witnesses are being examined. It will be appreciated that date of leading the additional evidence is given by the Court below with the consent of both the parties to avoid any inconvenience to any party.

The present criminal revision petition is allowed to the said extent only subject to the payment of Rs.5000/- as cost to be paid by the petitioners to the complainant.

September 14, 2021

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(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No