

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

**CRM-M-5598 of 2020(O&M)
Date of Decision: 28.10.2022**

Kuber Rathi

...Petitioner

Versus

Ankit Bhatia

...Respondent

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Tanmoy Gupta, Advocate
 For the petitioner.**

**Mr. Gourave Bhayya Gilhotra, Advocate
 For the respondent.**

KARAMJIT SINGH, J.

The present petition has been filed by the petitioner/ accused seeking quashing of order dated 25.02.2019 (Annexure P-5) vide which the application of the petitioner under Section 391 Cr.P.C. was dismissed in criminal appeal No. 44 of 2018 titled Kuber Rathi Vs. Ankit Bhatia.

The counsel for the petitioner submits that during the pendency of the aforesaid criminal appeal the petitioner filed an application under Section 391 Cr.P.C. to produce and prove complaint lodged by the petitioner against the respondent/ complainant with the police in which it was stated that the complainant and Akshay Bhatia hatched conspiracy and misused the cheque in question which belonged to the firm and in lieu of the said cheque they intend to extort money from the petitioner. The counsel for the petitioner further submits that the cheque in question was misused by respondent/ complainant and in this regard the aforesaid complaint was

lodged by the petitioner and the said complaint is required to be produced and proved on the record for the just decision of the case. The counsel for the petitioner further submits that the first Appellate Court dismissed the application filed by the petitioner under Section 391 Cr.P.C. without appreciating the real dispute which was there between the petitioner and Akshay Bhatia who is real brother of complainant and both of them procured cheque in question and thereafter misused the same and then respondent filed criminal complaint under Section 138 of Negotiable Instruments Act(for brevity, the Act) against petitioner, Akshay Bhatia and M/s AK Impex and lateron the said complaint was dismissed as withdrawn against Akshay Bhatia and the trial Court while believing the testimony of respondent/ complainant convicted the petitioner under Section 138 of the Act and thereafter the petitioner filed criminal appeal and in the said appeal aforesaid application under Section 391 Cr.P.C. was filed but the Appellate Court dismissed the same vide impugned order which is illegal.

The present petition is contested by counsel for respondent who submits that there is no illegality in the impugned order. The counsel for respondent further submits that the alleged complaint is an after-thought and even otherwise has got no bearing on the present case.

I have considered the submissions made by counsel for the parties.

The case of the petitioner is that respondent in connivance with Akshay Bhatia procured blank signed cheque and thereafter misused the same to prosecute the petitioner under Section 138 of the Act. The petitioner

in order to establish his defence, intends to produce and prove one complaint lodged by him with the police against Akshay Bhatia and respondent Ankit Bhatia which is dated 25.08.2015. No prejudice is going to be caused to respondent if the petitioner is allowed to produce and prove the said complaint under Section 391 Cr.P.C.. This Court is of the view that the said complaint is necessary for the just decision of the case. The request of the petitioner to lead additional evidence cannot be declined just on the ground that he moved application under Section 391 Cr.P.C. to adduce additional evidence at the belated stage.

In view of the above, this Court is of the opinion that the impugned order Annexure P-5 dated 25.02.2019 being illegal and perverse, deserves to be set aside.

Consequently, the present petition is allowed and impugned order Annexure P-5 dated 25.02.2019 is set aside and the application moved by the petitioner under Section 391 Cr.P.C. is allowed and one effective opportunity is granted to the petitioner to produce and prove complaint dated 25.08.2015 in accordance with law, by way of additional evidence.

The Appellate Court is at liberty to record the said evidence itself or direct it to be recorded by learned trial Court in a time bound manner. The evidentiary value of the said additional evidence is to be considered by the Court concerned at the appropriate stage. As the appeal is of year 2018, the learned Appellate Court is directed to decide the same expeditiously preferably within next 06 months of the receipt of the copy of this order.

The parties are directed to appear before the Appellate Court concerned on the date already fixed there.

Petition stands disposed of accordingly.

Any observations made hereinabove is not to be considered as expression of opinion on the merits of the case.

28.10.2022
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(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No