

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

CRR-989-2022 (O&M)

Date of Decision:- 14.10.2022

Sunil Kumar

... Petitioner

Versus

Smt. Anuja

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Sandeep Kotla, Advocate for the petitioner.

GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 20.12.2021 passed by learned Additional Sessions Judge, Hisar vide which an application filed by the petitioner under Section 391 Cr.P.C. seeking permission to lead additional evidence during the pendency of appeal has been declined.
2. A few facts necessary to notice for disposal of this petition are that respondent Smt. Anuja instituted a complaint regarding dishonour of a cheque of Rs. 5 lacs under Section 138 of the Negotiable Instruments Act against the petitioner Sunil Kumar in the Court of learned Judicial Magistrate First Class, Hisar. The petitioner was tried and was held guilty vide judgment dated 9.8.2018 and was sentenced to undergo imprisonment for one year and to pay compensation of Rs. 5 lacs vide order dated 10.8.2018 passed by learned Judicial Magistrate First Class, Hisar.
3. The petitioner, being aggrieved by the said judgment and order, preferred an appeal in the Court of learned Additional Sessions Judge, which is stated to

be pending. During the course of pendency of the said appeal before the Court of Sessions, the petitioner moved an application under Section 391 Cr.P.C. seeking permission to lead additional evidence so as to produce an affidavit of one Radhe Sham, stated to be uncle of complainant, with whom the petitioner was having some monetary transactions. The grounds set forth by the petitioner was that he never had any monetary transaction with the complainant but was having some monetary transaction with Radhe Sham, uncle of the complainant and that it was Radhe Sham who had handed over the cheque in question to the complainant which was infact a security and was misused by the complainant. The petitioner asserted that earlier he did not know about the whereabouts of Radhe Sham as he had left Hisar and later came to know that he was residing at Bikaner and on account of his old age, being aged 80 years, could not travel to Hisar and had, therefore, executed an affidavit dated 26.10.2021 stating that there was no money transaction between the complainant and the petitioner and that the complaint was false.

4. The trial Court considered the application and dismissed the same vide impugned order dated 20.12.2021, which is assailed in the instant petition.
5. The learned counsel for the petitioner has submitted that the affidavit in question holds the key to the entire controversy and that the same is a material evidence and that in case the same is not permitted to be brought on record, the petitioner would be seriously prejudiced.
5. This Court has considered the aforesaid submissions.
6. The trial Court while declining the application under Section 391 Cr.P.C. has noticed that the complainant had never admitted with regard to any monetary

transactions between the petitioner and Radhe Sham. A perusal of the impugned order also shows that the learned Additional Sessions Judge, Hisar also noticed that during the entire cross-examination of the complainant, no suggestion was ever put to her that the cheque in question had infact been handed over to the complainant by Radhe Sham. Even in the statement under Section 313 Cr.P.C., the petitioner never took any such stand. Further, the said application under Section 391 Cr.P.C. came to be filed after about 7 years. It remains unexplained as to why the petitioner never raised any such defence during the proceedings of the trial. Additional evidence cannot be permitted to be led on the mere asking. Such applicant is expected to furnish sufficient explanation as regards the reasons justifying such additional evidence. In these circumstances, this Court does not find any infirmity in the impugned order and the same is upheld.

7. There is no merit in the revision petition and the same, being sans merit, is hereby dismissed.

14.10.2022

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No