

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

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**CRM-M-33912-2022
Decided on : 03.08.2022**

Mamta Babbar

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

PRESENT: Mr. Baljinder Singh, Advocate
for the petitioner(s).

VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed under Section 482 of the Code of Criminal procedure (hereinafter referred to as 'Cr.P.C.') for setting aside the order dated 04.01.2022, passed by the Addl. Sessions Judge, Panipat (in short 'ASJ'), in Criminal Appeal No. 119 of 2018, in case bearing FIR No.338, dated 08.03.2014, whereby, the application filed by the petitioner under Section 391 Cr.P.C. for leading additional evidence by way of tendering certified copy of the judgment dated 11.06.2019, in Criminal Case No. 174 of 2019, arising out of the FIR No. 1230, dated 15.10.2011, has been rejected by the ASJ, while observing that the said judgment has no bearing on the facts and circumstances of the case and is not likely to serve any purpose by allowing the application in hand, as no cross appeal seeking enhancement of sentence, has been preferred by the petitioner.

Learned counsel appearing on behalf of the petitioner contends that the reference to the aforesaid judgment is solely for the purpose of reflecting the criminal antecedents of the petitioner and that even though the petitioner may not have raised a challenge by way of cross-appeal, aggrieved against the order of sentence, however, the quantum of sentence is still a

matter under consideration before the lower Appellate Court and that the same may have a bearing in the final adjudication and sentencing to be awarded by the lower Appellate Court at the stage of considering the appeal including the right, if any, of the respondent-accused to seek a release on probation. He, thus, contends that the ASJ, has thus, pre-assessed the relevance and significance of the additional evidence, notwithstanding, that the criminal antecedents develop a bearing on the sentence itself. Besides, the judgment in question was passed subsequent to the appeal having already been filed in the year 2018, and as such, there was no inordinate delay on the part of the petitioner in the moving of the said application. Moreover, the same is an undisputed question of fact and would not require any further evidence to be recorded.

Taking into consideration the submissions made above, and without unnecessarily delaying the proceedings before the lower Appellate Court, I am inclined to dispose of the present petition without notice to the private respondents.

As the additional evidence remains undisputed being a certified copy of a judgment of conviction, the respondents cannot claim an irreparable loss by allowing the said judgment to be tendered in evidence. Their defense cannot be prejudiced on account of the aforesaid judgment being tendered in evidence.

The relevant provision of Section 391 of the Cr.PC is reproduced hereinbelow:-

“391. 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.”*

In *Century Steel Traders Vs. Polaris Steel Castings Pvt. Ltd. & another*, the Bombay High Court, while discussing the permissibility of additional evidence under Section 391 Cr.P.C., had held that;

“25. The appellant filed Criminal Application Nos. 203 of 2018 and 256 of 2018 under Sections 311 read with 391 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeking permission to place on record documents and for permission to lead further evidence and to call and examine Inspector from the Department of Shops and Establishment. The said applications moved on behalf of the appellant cannot be permitted at this stage. The reliance placed on behalf of the appellant on the judgment of the Hon'ble Supreme Court in the case of Ashok Tshering Bhutia vs. State of Sikkim - 2011(3) Mh.L.J. (Cri.) (S.C.) 150 = (2011) 4 SCC 402 in this regard, is also misplaced. In the said judgment, the Hon'ble Supreme Court has laid down that additional evidence at belated stage is permissible in case of failure of justice. But, it is further laid down that such power is to be exercised sparingly and only in exceptional cases where the Court is satisfied that permitting additional evidence would serve the interest of justice. It is laid down that it would depend upon the facts and circumstances of the individual case as to whether such permission was to be granted and further that it should be generally invoked when formal proof for the prosecution is necessary. The said position of law does not favour the appellant in the present case at all. These applications are clearly an after thought and a feeble attempt to support the contentions raised on behalf of the appellant. The said applications pertain to an attempt on the part of the

appellant to prove that that the said Rajiv Shivji Sharma was indeed the Proprietor of the appellant. This is an attempt to demonstrate that the complaint was filed by an authorised person. The appellant has failed to make out a case for adducing additional evidence at this stage. Even otherwise, this Court has found that on merits the appellant has absolutely no case. Therefore, the present Criminal Application Nos. 203 of 2018 and 256 of 2018 deserve to be dismissed. ”

The application for additional evidence is for placing on record the judgment of conviction passed subsequently. The manner in which reliance on such evidence is to be placed, is the prerogative of the party, who wants to lead such evidence and it would be premature for the lower Appellate Court to conclude that such evidence is irrelevant at this stage especially when the main appeal is not being considered. The relevance and the objective behind the evidence, has to be assessed at the stage of final adjudication.

Furthermore, it cannot *ipso facto* be held that the said judgment sought to be led as additional evidence has no significance at all or that the previous conviction in a criminal case shall have no bearing at the stage when the appeal is being finally heard and the lower Appellate Court is examining the order of sentence passed by the Judicial Magistrate. Besides, since it is a certified copy of the judgment passed in an FIR pertaining to the accused, it does not involve any disputed question of fact and would not require leading of any fresh evidence or cross-examination of such witnesses.

In view of the above, the instant petition is allowed, subject to a cost of Rs.3000/- payable to the private respondents within a period of 15 days.

Liberty is, however, granted to the respondents to seek revival of the present petition in case it is established that there has been a material concealment of fact by the petitioner or that there is an irreparable loss or great prejudice occasioned to the respondents, as a result of allowing the aforesaid petition.

(VINOD S. BHARDWAJ)
JUDGE

August 03, 2022

J.Ram

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*