

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

**CRM-M-53835-2022
Date of Decision: 01.12.2022**

Ravinder Kumar

..... Petitioner

Versus

Sandeep

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Sukhdeep Singh, Advocate for
Mr. Parminder Singh, Advocate
for the petitioner.

Mr. Chirag Wadhwa, Advocate
for the respondent.

HARSH BUNGER J. (ORAL)

Prayer in this petition filed under Section 482 Cr.P.C. is for setting aside order dated 10.11.2022 (Annexure P-5), passed by the learned Additional Sessions Judge, Karnal, whereby request of the petitioner for deciding the application under Section 391 Cr.P.C., filed prior to the decision of main appeal, was not accepted and the case was adjourned for arguments in the said application as well as the main appeal. By way of this petition, the petitioner has prayed that an appropriate order/direction be issued to the lower Appellate Court to decide the application under Section 391 Cr.P.C., filed by him in the main appeal, at the first instance before deciding the appeal itself.

Pursuant to order dated 21.11.2022, Mr. Chirag Kundu, Advocate has appeared and filed Vakalatnama on behalf of the respondent in Court today, which is taken on record, subject to all just exceptions.

Learned counsel for the petitioner has placed reliance upon the judgment of the Hon'ble Apex Court passed in “**Asim @ Munmun @ Asif Abdulkarim Solanki Vs. State of Gujarat**”, 2020(3) AICLR 558, to submit that an application filed under Section 391 Cr.P.C. should be heard immediately after it is filed, without waiting for the appeal to be finally heard. The relevant extract of the said judgment is reproduced as under:

“ - x - x -
 3. Section 391 of the Cr.P.C. does not impose any restriction as to when the application filed for adducing additional evidence should be heard by the High Court. In fact, we are of the opinion that it is desirable that an application filed under Section 391 should be heard immediately after it is filed without waiting for the appeal to be finally heard.

- x - x -”

Learned counsel for the respondent submits that the matter is now listed before the learned lower Appellate Court for 05.12.2022 and he has no objection if the application under Section 391 Cr.P.C., filed by the petitioner herein, is decided prior to decision of the main appeal.

Without making any observation on the merits of the case or the application filed under Section 391 Cr.P.C., the lower Appellate Court/Additional Sessions Judge, Karnal, who is seized of the appeal bearing No.462 of 2016 titled as “**Ravinder Vs. Sandeep**” (Annexure P-5), is directed to hear the application under Section 391 Cr.P.C., filed by the petitioner, on the date already fixed, i.e. 05.12.2022, and in any case, within

a period of two weeks thereafter and then proceed to decide the main

appeal, in accordance with law.

The instant petition is accordingly disposed of.

01.12.2022
Apurva

(HARSH BUNGER)
JUDGE

- 1. Whether speaking/reasoned : Yes/No
- 2. Whether reportable : Yes/No