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

CRR-276-2023 (O&M)

Date of Decision: January 27, 2023

Star Associates through its Proprietor Archana Peter and another
.....Petitioners

Versus

Vineet SehgalRespondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Kumar Vishav Aggarwal, Advocate
for the petitioner.

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RAJESH BHARDWAJ, J.

CRM-4056-2023

For the reasons mentioned in the application, the same is
allowed.

Main case

Petitioners have approached this Court by way of filing of this
revision petition impugning the order dated 12.01.2023 passed by learned
Additional Sessions Judge, Kurukshetra, vide which application filed by the
petitioners under Section 391 Cr.P.C. to lead additional evidence, was partly
allowed and partly rejected.

As per facts of the case, the respondent filed a complaint under
Section 138 of the Negotiable Instruments Act (for brevity,'the Act') on the
allegations that the petitioners issued a cheque No.855309, dated
17.08.2015, of an amount of Rs.10.00 lakhs drawn at Canara Bank, Jagadhri
Workshop, District Yamuna Nagar, however, on presentation of the same, it
was dishonoured. Notice was issued to the petitioners but they failed to pay

the amount and hence complaint under Section 138 of the Act was filed. After the trial, the petitioners were convicted and sentenced to undergo RI for two years and further to pay compensation to the tune of double of the amount of impugned cheque, i.e. Rs.20.00 lakhs within five months from the date of order, dated 09.02.2018. Petitioners assailed the same by way of filing appeal before the learned Additional Sessions Judge, Kurukshetra. However, during pendency of the appeal, the petitioners filed an application under Section 391 Cr.P.C. praying that they want to place on file a certified copy of statement of Vineet Sehgal given in Civil Suit No.330 of 2018 pending in the Court of Civil Judge (Senior Division), Kurukshetra, and further to allow them to cross-examine CW1-Vineet Sehgal to confront the statement. Prayer was also made to re-examine DW2-Ghalla Nee Rinku in order to prove the SMS, which were sent by Vineet Sehgal to the petitioners. The petitioners also prayed in the application to place on record a copy of the report under Section 173 Cr.P.C. in FIR No.140, dated 24.02.2016, under Sections 406, 420, 506, 120-B and 34 IPC.

However, this application was strongly opposed by the respondent/complainant contending that the contentions raised by the petitioners are frivolous and the application has been filed only in order to delay the decision of the case. The learned appellate Court after hearing both the parties and perusing the record partly allowed and partly dismissed the same vide impugned order dated 12.01.2023. Certified copies of statement of Vineet Sehgal & report under Section 173 Cr.P.C. was permitted to be filed, however, the prayer to cross-examine CW1 Vineet Sehgal & re-examine DW2-Ghalla Nee Rinku was declined. Aggrieved by

the same, the petitioners are before this Court by way of filing of this

petition.

Counsel for the petitioners has vehemently contended that the petitioners were maliciously prosecuted by the respondent by way of filing a complaint under Section 138 of the Act. He has submitted that cheque in question was given to one Jai Kishan and at that time, it did not bear her signature. However, later on, the complainant manipulated the cheque in connivance with Jai Kishan and filed the present complaint. He has contended that report of the Finger Print Expert also corroborated the contentions raised by the petitioners. It has been contended that placing on record a copy of the statement recorded in civil suit, a copy of the report under Section 173 Cr.P.C. in FIR No.140, dated 24.02.2016, cross-examination of CW1 and re-examination of DW-2 are necessary for the just decision of the case. He has submitted that the respondent/complainant sent a message on mobile phone of husband of accused requesting him to deposit Rs.7,00,000/- in the account of Shyam Sunder and thereupon the petitioners deposited the amount in the account of Shyam Sunder but during cross-examination in the proceedings under Section 138 of the Act, the respondent denied the fact that he knew Shyam Sunder. He submits that the learned Appellate Court has partly allowed and partly dismissed the application holding the same to be the modus operandi to delay the proceedings, which is totally unsustainable in the eyes of law.

Heard.

Evidently, complaint under Section 138 of the Act was filed by the respondent on the basis of the allegations of dishonour of cheque for insufficient funds issued by the petitioners. The complaint was instituted in the year 2015 and the petitioner/accused was convicted by the trial Court

vide orders dated 08.02.2018/09.02.2018. Thereafter, the petitioners filed appeal before the learned Additional Sessions Judge, Kurukshetra. During pendency of the appeal, the petitioners filed the present application under Section 391 Cr.P.C. for leading additional evidence. On perusing of the record, it is evident that during trial, the complainant closed his evidence on 10.11.2016 and after recording statement under Section 313 Cr.P.C., the case was pending for leading defence evidence. The petitioners/accused led her defence evidence by producing the Finger Print Expert, bank official and examined Rinku Ghalla on 02.08.2018. After that the trial Court put the case for arguments, however, just before that, the complainant moved an application under Section 311 Cr.P.C., which was allowed and the case remained pending for leading rebuttal evidence/defence evidence. The trial Court granted numerous opportunities to the convict to lead rebuttal/defence evidence, i.e. 11.04.2017, 26.04.2017, 18.05.2017, 26.05.2017, 14.07.2017, 24.07.2017, 03.08.2017, 18.08.2017, 28.08.2017, 11.09.2017, 15.09.2017, 25.09.2017, 29.09.2017, 25.10.2017, 08.11.2017, 22.11.2017, 29.11.2017, 04.12.2017, 08.12.2017, 13.12.2017, 18.12.2017, 21.12.2017, 04.01.2018, 08.01.2018, 11.01.2018, 17.01.2018, 19.01.2018, 22.01.2018, 25.01.2018, 30.01.2018, 02.02.2018, 05.02.2018, 07.02.2018 and 08.02.2018, the date on which the defence evidence was closed. A perusal of the same shows that the petitioners were granted about 34 opportunities for leading their evidence. Filing the application at appellate stage would show that the petitioners after availing number of opportunities have filed the application only in order to delay the proceedings. Section 391 Cr.P.C. reads as under:

"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.”

Reliance is placed upon **Rambhau vs State of Maharashtra**

2001(2) RCR (Criminal) 721, wherein it has been held by Hon'ble Apex Court as under:-

“4. Incidentally, Section 391 forms an exception to the general rule that an Appeal must be decided on the evidence which was before the Trial Court and the powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice.”

In **Dr.Rajesh Talwar and another vs C.B.I. and another**

2014(1) SCC (Cri.) 493 it has been held by Hon'ble Apex Court that Criminal Courts are not obliged to accede to the request made by any party to entertain and allow application for additional evidence and in fact, are bound in terms of Section 233(3) Criminal Procedure Code to refuse such request if it appears that they are made in order to vex the proceedings or delay the same.

There is no denial to the fact that statutory power under Section

391 Cr.P.C. can be invoked by the Court if the circumstances prove that production of the evidence prayed for, is necessary for the just decision of the case and accepting the same would meet the ends of justice. However, in the present case, the petitioners failed to make out a case that the additional evidence prayed for is necessary for decision of the case and thus, the appeal being without any merit, has been rightly dismissed by the appellate Court.

Resultantly, the present petition being devoid of any merit is hereby dismissed.

January 27, 2023
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(RAJESH BHARDWAJ)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |