

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

**CRM-M-38886 of 2018
Date of Decision:- 09.01.2023**

Sandeep Kumar

....Petitioner

Vs.

State through District Drug Inspector, Ferozepur

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Sandeep K. Passi, Advocate
for the petitioner.

Mr. C.L. Pawar, Addl. AG Punjab.

KARAMJIT SINGH, J.

The petitioner is seeking quashing of the impugned order dated 06.08.2018 (Annexure P-1) passed by the learned Additional Sessions Judge, Ferozepur vide which the application filed by petitioner/ accused under Section 391 Cr.P.C. for leading additional evidence in Criminal Appeal No. CRA/156/2016 has been dismissed.

Brief facts of the case are that on 4.7.2006, shop No.2 adjoining M/s Chalana Medical Agencies near Bus Stand Jalalabad District Ferozepur was inspected by Rajesh Suri the then Drug Inspector along with Amit Duggal Drug Inspector Jalandhar and Jitender Singh Drug Inspector Bathinda and petitioner/accused was

found stocking many types of allopaethic drugs for the purpose of sale and distribution without having any valid drug sale license or registered Medical Practitioner Certificate, as required under law. After following the proper procedure, State through Drugs Inspector Ferozepur filed complaint under Section 18(c) read with Rule 62 and Section 18-A of the Drugs and Cosmetics Act, 1940 and on conclusion of trial petitioner/accused was convicted and sentenced to imprisonment under Section 27(b) (ii) for contravention of Section 18(c) and 18(A) of Drugs and Cosmetics Act, 1940 by the Court of Id. Chief Judicial Magistrate, Ferozepur vide judgment and order dated 25.7.2016.

Being aggrieved petitioner/accused has filed criminal appeal which is pending in the Court of Id. Additional Sessions Judge, Ferozepur and in the said appeal petitioner/accused filed an application under Section 391 Cr.P.C to tender the following documents by way of additional evidence:-

“(i) Original bill No.267 Book No.6 dated 12.6.2006

issued by M/s Radhika Medicos.

(ii) Bill No.252 dated 14.6.2006 issued by kalbro.

(iii) Bill No.12962 dated 19.5.2006 issued by York’s

Pharma.

(iv) Bill No.2300 dated 30.6.2006 issued by Suresh

Medical Agency.

- (v) *Bill No.193 dated 1.7.2006 issued by Royson Sales Corporation.*
- (vi) *Bill No.341 dated 3.7.2006 issued by M/s Pace Pharma.*
- (vii) *Bill No.000259 dated 16.6.2006 issued by R.P. Dichech Pvt. Ltd.*
- (viii) *Bill No.403 dated 1.7.2006 issued by Chalana Medicos.*
- (ix) *Bill No.083 dated 1.7.2006 issued by kansal Medicine Traders.”*

The said application was contested by the State and dismissed by the Ld. Appellate Court vide order dated 6.8.2018, Annexure P-1 with following observations:-

“Through the application for additional evidence under Section 391 Cr.PC, the appellant seeks to bring on record certain bills to prove the fact that the appellant is not occupying shop No.3 (godown) as alleged by the complainant and the same is not in his possession and is in possession of Ashok Kumar son of Mukand Lal under Municipal Committee under the record of the committee and that he purchased the medicines so recovered through these bills. Perusal of the file of the lower court would reveal that photostat copies of the documents which are now sought to be brought on record at

the appellate stage were there on the judicial record of the lower court when the trial was in progress. The accused had opportunity to bring on record the said documents at that stage of leading defence evidence, but he did not do so. The documents sought to be brought on record are defence taken by the accused. Hence, it was for him to bring on record all the documents to prove his defence when sufficient opportunities were given. Hence, the application cannot be allowed at this stage and the same is dismissed.”

The petitioner being aggrieved has filed the present petition to challenge the order dated 6.8.2018, Annexure P-1.

Notice of motion was issued vide order dated 6.9.2018 and in the meantime passing of final order by the Appellate Court was stayed.

The State has filed the reply by way of affidavit of Omkar Singh, Drugs Control Officer, Fazilka, which was taken on record.

I have heard the counsel for the parties.

The counsel for the petitioner submits that the petitioner has been falsely implicated in the present case at the instance of Drug inspector. Actually the petitioner is holding a valid drug license for M/s Chalana Medical Agencies and the concerned medicines were purchased against valid bills and the copy of the same same were produced before the trial Court at the time of framing of charge, but

thereafter, due to inadvertence the petitioner failed to tender the originals of said bills in his defence evidence and as and when the petitioner came to know about the said oversight he immediately approached the Appellate Court by filing application under Section 391 Cr.P.C. in order to produce the aforesaid bills to prove his innocence. The counsel for the petitioner further submits that aforesaid documents/bills are necessary for the just decision of the case and the Appellate Court dismissed the said application without application of mind, simply on the ground that the petitioner failed to adduce the said evidence at the relevant time before the trial Court and that the application moved by the petitioner under Section 391 Cr.P.C was declined being filed at the belated stage. The counsel for the petitioner submits that vast powers are provided under Section 319 Cr.P.C. to obtain additional evidence at the appellate stage in case the same is necessary to secure ends of justice and that application filed under Section 391 Cr.P.C. cannot be declined just on the ground that the same was filed at a belated stage. So prayer is made that the present petition be allowed.

The present petition is contested by the State counsel who submits that the petitioner was granted fair opportunity to lead evidence in his defence by the trial Court but at that time the petitioner remained silent and he filed the application under Section 319 Cr.P.C. only at the appellate stage and the same was rightly

declined by the Appellate Court and that the present petition deserves to be dismissed.

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

In ***Rambhau and another Vs. State of Maharashtra 2001 (2) RCR Criminal 721*** the Hon'ble Apex Court has observed that there is a very wide discretion in the matter of obtaining additional evidence in terms of Section 391 Cr.P.C. At the same time it is also observed by the Hon'ble Apex Court that it is not a disguise for retrial or to change the nature of the case against the accused.

Further, the Hon'ble Supreme Court in ***Brig. Sukhjeet Singh (Retd.) Vs State of Uttar Pradesh and others 2019(1) RCR Criminal 895***, while dealing with the matter relating to rejection of application filed by the appellant under Section 391 Cr.P.C. before the Sessions Judge in the Criminal appeal filed by him against the conviction order, held that power to take additional evidence under Section 391 CrPC is with an object to appropriately decide the appeal by the Appellate Court to secure the ends of justice. The Hon'ble Supreme Court further held when the Appellate Court has been given power to lead additional evidence, the observation that it is belated stage was uncalled for. The Hon'ble Supreme Court while rejecting the plea taken by the opposite party that the application to take additional evidence at appellate stage is filed by appellant for delaying the decision of the appeal, observed that when prosecution

took 12 years time in leading evidence before the trial Court, how can appellant be castigated with the allegation that he intended to delay the appeal to eternity.

Now adverting to the facts of the present case, it appears that the photocopies of the concerned bills relating to purchase of medicines were placed on record of the trial Court by the petitioner but due to oversight he failed to tender the original bills in his defence evidence and he sought permission to produce the same by way of additional evidence at the appellate stage, in order to establish his innocence as the petitioner claims that he is holding a valid drug license for M/s Chalana Medical Agencies and purchased the medicines in question against valid bills. The said bills appears to be necessary for the just decision of the case and to secure ends of justice. The trial Court dismissed the application moved under Section 391 CrPC only on the ground that the same was moved at the belated stage. The law in this regard is very clear as has been laid in *Brig. Sukhjeet Singh's* case (supra).

In view of the matter, this Court is of the opinion the impugned order dated 06.08.2018, Annexure P-1, passed by the Court of learned Additional Sessions Judge, Ferozepur is not passed in terms of the provision of Section 391 Cr.P.C and the settled law as has been discussed above.

Consequently, the present petition is allowed and the impugned order dated 06.08.2018, Annexure P-1, passed by the Court

of learned Additional Sessions Judge, Ferozepur is hereby set aside. The Court of learned Additional Sessions Judge, is directed to decide the application moved by the petitioner/accused under Section 391 Cr.P.C. afresh in the light of provision of Section 391 Cr.P.C. and the settled law as has been discussed above within a period of one month of the receipt of copy of this order.

The present petition stands disposed of in aforesaid terms.

09.01.2023
P. Chawla

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No