130 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-28968-2023
Decided on: 02.06.2023

D.N. Singla (Dina Nath Singla) ..... Petitioner

Versus

M/s Master Capital Services Limited ....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Vijay Lath, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

The petitioner has approached this Court praying for setting aside the order dated 12.04.2023, passed by the learned Additional Sessions Judge, Chandigarh in a Criminal Appeal vide which an application under Section 391 Cr.P.C. filed by the petitioner has been dismissed.

Adumbrated facts of the case are that the petitioner had been prosecuted in a complaint under Section 138 of the Negotiable Instruments Act, filed by the respondent. It had been alleged in the complaint that the petitioner-accused approached the complainant with a desire to invest and trade in the securities. They entered into an agreement and the petitioner was allotted unique client Code No.11DS95. In order to discharge his legal liability towards the complainant under the agreement signed between both of them, the petitioner issued a cheque No.821527, dated 10.02.2010 amounting to Rs.23,00,000/- in favour of the complainant with an assurance that the cheque would be paid on its presentation before the Bank. However, on presentation before HDFC Bank, the same was dishonoured with remarks “Payment Stopped by Drawer”. Faced with the situation, the complainant-respondent filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act. The trial Court summoned the accused-petitioner and on the conclusion of the trial, the allegations made against the petitioner were found to have been proved and hence, the trial Court held the petitioner guilty vide order dated 17.08.2016 and sentenced the petitioner by awarding one year rigorous imprisonment under Section 138 of the Negotiable Instruments Act and further directing the petitioner to pay a compensation to the tune of Rs.23,00,000/- in terms of Section 357(3) Cr.P.C. to the complainant. Aggrieved by the same, the petitioner filed an appeal before the learned Appellate Court, which is pending adjudication. During the pendency of the appeal, the petitioner filed an application under Section 391 Cr.P.C. for adducing further/additional evidence by way of calling the record/account of share holding of appellant-accused, which had not been produced by the respondent-complainant. However, the learned Appellate Court i.e. the Additional Sessions Judge, Chandigarh declined the same vide impugned order dated 12.04.2023. Aggrieved by the same the petitioner is before this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that the learned trial Court has miserably failed in appreciating the scope of Section 391 Cr.P.C. and the contentions raised by learned counsel for the petitioner that summoning of record as prayed for was essential for the decision of the case. He submits that the respondent-company charged commission/brokerage at the rate of 0.4 per cent from the client i.e. the petitioner on the value of transaction each time for normal mode. He submits that perusal of the deposition of CW-2 Ajit Baluni is clear enough to show that the respondent-company was charging brokerage at the rate of 0.4 per cent. He submits that for commission/brokerage for a sum of Rs.23

lacs, there must be trading of shares for Rs.46 crores, but in the present case, there was no such trading qua the shares of the petitioner. He submits that CW-2 Ajit Baluni had deposed in his cross-examination that the petitioner had invested Rs.10,19,000/- on different dates. He submits that from the perusal of the deposition of CW-2 Ajit Baluni, who was authorized representative of the company it is proved that two accounts were being maintained by the respondent-company. It was submitted that the entire case of the respondent was based on the statement of CW-2 Ajit Baluni. He submits that as per the provisions of Section 391 Cr.P.C., the power is conferred upon by the Appellate Court to take further evidence while dealing with the appeal when additional evidence is necessary for adjudication of the case before the Appellate Court. He submits that the proposed additional evidence were the account books of the respondent-company, which is a limited company, as the account books would show that how the trading qua the shares of the petitioner becomes due for Rs.23 lacs when his share did amount to only Rs.10,19,000/- and hence, it is very essential evidence to be produced as an additional evidence. He submits that learned Appellant Court has failed to appreciate the power conferred on it as enumerated under Section 391 Cr.P.C. and the law settled and thus, has drawn wrong conclusion in declining the application filed by the petitioner under Section 391 Cr.P.C. and hence, the impugned order being unsustainable in the eyes of law, deserves to be set aside.

Heard.

After hearing learned counsel for the petitioner and perusing the record, it is apparent that the petitioner had been prosecuted by the respondent-company in a complaint filed under Section 138 of the

Negotiable Instruments Act. After the trial, the petitioner was convicted and sentenced by the trial Court for the offence under Section 138 of the Negotiable Instruments Act for a period of one year of rigorous imprisonment with a compensation of Rs.23 lacs to the complainant. Aggrieved by the same, the petitioner filed an appeal before the learned Appellate Court, which is pending adjudication. During the pendency of the same, application under Section 391 Cr.P.C. was filed by the petitioner for producing the ledger books as prayed for. However, finding no merit in the application the learned Appellate Court declined the same after hearing both the sides. It is apparent from the perusal of the record that the complainant is SEBI registered company and the petitioner was a client of the same. Both of them entered into an agreement exhibited as Ex.C-2. As apparent from the arguments raised, the crux of the arguments raised by learned counsel for the petitioner is that on his asking the complainant had not produced the complete record pertaining to sell and buying of holdings. It is an admitted fact that the petitioner was given numerous opportunities to lead his evidence. He proved the documents as Ex.DX to DZ. Counsel for the petitioner has laid emphasis on the deposition of the CW-2 Ajit Baluni. A perusal of the same would show that the petitioner had cross-examined this witness and other witnesses produced by the complainant at length. The contentions regarding charge of commission/ brokerage have been admitted by the witnesses produced by the complainant. The record which was produced by the complainant had also been put to the petitioner and he had cross-examined the complainant witness regarding the same. Thus, this is an admitted fact that record which was not produced as contended by learned counsel for the petitioner, was very much in the knowledge of the petitioner since beginning. But despite having availed numerous opportunities, he did not make any endeavour to bring the same on record, if it was so essential for just decision of the case. Even after filing of this appeal, the present application has been filed at a belated stage. There is no gainsaying that the Appellate Court had the jurisdiction to invoke its power under Section 391 Cr.P.C. but the same cannot be invoked in a cavalier manner.

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.

In case of **Brigadier Sukhjeet Singh (Retired) MVC Vs. State of Uttar Pradesh & others,** 2019(1) RCR Criminal 895, Hon'ble Apex Court further held as under:-

> "The key words in Section 391(1) are "if it thinks additional evidence to be necessary". The word "necessary" used in Section 391(1) is to mean necessary for deciding the appeal. Power to take additional evidence under Section 391 Cr.P.C. is with the object of appropriate decision of the appeal by the appellate Court to secure ends of justice".

There is no denial to the fact that statutory power under Section 391 Cr.P.C. can be invoked by the Court at any stage 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 petitioner has 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

(RAJESH BHARDWAJ)
JUDGE

02.06.2023
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Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No