

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-7490-2017

Date of Decision: 17.01.2023

Rattan Pal @ Dahla & Ors.

... Petitioners

VS.

State of Punjab & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Vishal Munjal, Advocate for the petitioners

Mr. Mohit Chaudhary, AAG Punjab

Sandeep Moudgil, J.

The petitioners seek quashing of the order dated 18.01.2017 (Annexure P7) passed by Addl. Sessions Judge, Pathankot vide which application to adduce additional evidence filed by the complainant under Section 391 CrPC, at appellate stage, has been allowed, in case arising out of FIR No.79 dated 24.09.2008 under Sections 420/120-B/467/468/471 IPC registered at Police Station Division No.2, Pathankot.

The complainant – respondent No.2 filed a complaint against the petitioners alleging that all the petitioners conspired with each other and induced the complainant-Deepak Kumar for delivering Rs.48,97,000/- on the pretext that Sukhwinder Singh was owner of 83 kanals of land situated in village Gadha Dhar, Tehsil Kathua, whereas Sukhwinder Singh is not owner of the land, therefore, they have failed to transfer the property in favour of the complainant and thereby committed cheating. The trial court vide its judgment dated 30.03.2015 acquitted the petitioners of the charges framed against them. The respondent No.2 preferred appeal against the judgment of acquittal. Along with the appeal, an application under Section 391 CrPC was

also moved for summoning the record regarding the statement dated 01.04.2008 and 02.04.2008 suffered by the respondent No.2 before the enquiry officer during the enquiry proceedings. The said application under Section 391 CrPC for additional evidence has been allowed by the appellate court vide impugned order dated 18.01.2017 (Annexure P7) permitting the complainant to appear and produce documents in the shape of GPA and other documents.

Learned counsel for the petitioners submitted that the GPA has already been produced by the complainant on record while appearing in the witness box as PW5 as is evident from the perusal of his statement (Annexure P3). Therefore, the once the documents are already on record, there is no need to again call the complainant in the witness box to produce those document which would be an exercise in futility and sheer attempt to delay the proceedings and to fill up the lacuna which is impermissible in law.

It is further contended that the trial court has acquitted the petitioners on various grounds but not on the ground that the complainant has not produced documents in the shape of GPA and other revenue records which the appellate court has permitted the complainant to produce on record vide the impugned order. Further, there is no prayer by the complainant to produce GPA and other revenue records which has been allowed by the Appellate Court. Even, there is no request by the complainant to permit him to appear in the witness box to produce documents. The simple request of the complainant in the said application under Section 391 CrPC is to produce on record his statement and the statement of the petitioners recorded by enquiry officer during enquiry proceedings. As such, the Appellate Court has gone

beyond the prayer made by the Complainant and has allowed the application in a totally illegal and erroneous manner.

Reliance has been placed by the petitioners on Supreme Court in *Anil Sharma & Ors. vs. State of Jharkhand 2004(3) RCR (CrL.) 774* and of this Court in *Jai Singh vs. Haryana Agro Industries Corp. Ltd. 2006(3) RCR (CrL.) 936* to contend that if any witness wants to give evidence different from that given by him earlier at the trial, appellate court would consider the genuineness of the prayer in the context as to whether the witness concerned had fair opportunity to speak the truth earlier and should not accept it in a routine manner.

Notice of motion was issued on 07.03.2017 and vide order dated 16.08.2017, the trial court was directed to adjourn the case beyond the date fixed before this Court. Thereafter, the case was admitted on 15.02.2018 and it was directed that the interim order shall continue.

Reply dated 21.11.2017 has been filed by the State wherein it has been averred that the original GPA and original agreement were placed on record by filing an application under Section 311 CrPC but the said application has been dismissed and the said documents were not considered while passing the judgment of acquittal. Learned State counsel justified the impugned order to be legal and valid and affording of an opportunity to produce the documents is essential for proper adjudication of the matter.

Heard learned counsel of the parties and gone through the case file.

As far as production of statements of the petitioners and self-serving statement of the complainant, during the course of inquiry, are

concerned, they cannot be used for any purpose except that the matter was earlier enquired before the registration of the FIR. It, thus, appears that the opportunity given to the complainant has been scuttled by the Court since two applications filed under Section 311 of CrPC were dismissed, more-so, when the Court did not await for the decision of the superior court in which the same orders were assailed by way of revision which has resulted into denying fair opportunity to the complainant. The documents, namely, General Power of Attorney and the later agreement (in original), are already on record which were filed along with application under Section 311 CrPC. Therefore, to conclude, at this stage, whether the transaction was of a civil nature or any dishonest inducement or fraud has been played cannot be judged without giving fair opportunity to the complainant. As such, this Court is in agreement with the observations made by the appellate court to hold that the trial Court has not given fair opportunity to the complainant during the course of trial.

In Anil Sharma's case (supra), the Supreme Court held that the whenever an application for adducing additional evidence is made, the acceptability of the prayer in question is to be considered objectively. The Courts ought to guide itself by the metaphor in a case which has imprint of reasonableness and genuineness, the prayer for adducing of additional evidence has to be accepted. The Supreme Court further held that:-

“It is not that in every case where the witness who had given evidence before Court wants to change his mind and is prepared to speak differently, that the Court concerned should readily accede to such request by lending its assistance. If the witness who deposed one way earlier comes before the appellate

Court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier lapse, the Court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity to speak the truth earlier and in an appropriate case accept it. It is not that the power is to be exercised in a routine or cavalier manner, but being an exception to the ordinary rule of disposal of appeal on the basis of records received in exceptional cases or extraordinary situation the Court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice. The Court ultimately can certainly be guided by the metaphor, separate the grain from the chaff, and in a case which has telltale imprint of reasonableness and genuineness in the prayer, the same has to be accepted, at least to consider the worth, credibility and the acceptability of the same on merits of the material sought to be brought in.”

In the present case, the complainant intended to appear himself and to produce the documents, namely, GPA or any document to show that said GPA did not relate to the transaction as corresponding to the agreement or any revenue record that the alleged executant of the attorney was in fact, not the owner of the property in dispute, as a result of which, the complainant has been defrauded. The appellate court rightly permitted the complainant to lead additional evidence upon finding the contentions raised by the complainant to be genuine and also that no fair opportunity has been given to him since at the time of presentation of the challan, the police did not attach the statements suffered by the complainant as well as of the petitioners with the challan papers which was otherwise necessary for just and fair decision of

the case. There is therefore, no merit in the contentions raised by the petitioners.

In view of the above, there is no patent error or illegality in the order passed by the appellate authority in allowing the complainant to lead additional evidence under Section 391 CrPC.

Dismissed.

17.01.2023
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No