

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

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CRR-2043-2018 (O&M)
Date of Decision: 22.03.2023

NITIN SAINI

... Appellant

VERSUS

NISHANT SHARMA

... Respondent

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Munish Puri, Advocate, for the petitioner.

Mr. J.S. Mehndiratta, Advocate , for the respondent.

SANDEEP MOUDGIL, J. (ORAL)

By filing the present Revision, the petitioner has raised a challenged to order dated 24.04.2018 passed by the Additional Sessions Judge, Pathankot, whereby the application filed by the respondent-accused under Section 391 of the Cr.P.C. for leading additional evidence during the pendency of the appeal has been allowed.

It is contended that the respondent-accused has filed an appeal bearing Criminal Appeal No.11 of 2018 against the judgment of conviction and order of sentence dated 20.12.2017 passed by the Judicial Magistrate Ist Class, Pathankot, whereby the respondent-accused has been convicted and sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5,000/- for the offence punishable under Section 138 of the N.I. Act, 1881.

It is further contended that during the pendency of the above said appeal, the respondent-accused moved an application under Section 391 of the Cr.P.C. for leading additional evidence in the shape of some call recording. After hearing the arguments of both sides, the said application has been allowed by the

Addl. Sessions Judge, Pathankot vide impugned order dated 24.04.2018. It is further alleged that the said order is illegal and not sustainable in the eyes of law. By way of proposed additional evidence, the respondent-accused has tried to bring a totally different defence that was raised before the lower Court, which ought not to be allowed at this belated stage. The said application has been filed just to fill up the lacuna and to delay the proceedings; and such a practice should not be promoted.

There is no representation on behalf of the respondent-accused.

Heard.

It is evident from the perusal of the record that the respondent-accused had been facing trial for the commission of offence punishable under Section 138 of the N.I. Act, 1881, wherein he had been convicted and sentenced to undergo simple imprisonment for a period of one year and to pay fine of Rs.5,000/-. Aggrieved thereof, he preferred an appeal in the Sessions Court, Pathankot, which is pending before the Additional Sessions Judge, Pathankot. It is further clear from the perusal of the record that the respondent-accused had moved an application under Section 391 of the Cr.P.C. for leading additional evidence in the shape of a CD containing the conversation between the complainant and the accused. The said application has allowed by the Addl. Sessions Judge, Pathankot vide order dated 24.04.2018, which is subject matter of challenge in the instant Revision Petition. The said application has been allowed only on the ground that there was no denial of such conversation.

In the considered opinion of this Court, the impugned order suffers from grave illegality and perversity. There was no cogent reason produced by the respondent-accused that as to why he did not produce the alleged piece of evidence during trial. He also failed to explain that as to why and for what reasons

he withheld such material piece of evidence with him. The alleged call recording pertain to a period which is much prior to the filing of the complaint and as such, it also does not seem to be a case where the respondent-accused would have got the alleged piece of evidence after conclusion of the trial or that he was not in the knowledge thereof prior thereto. The application has been allowed in a routine manner, which is otherwise appears to be a delaying tactic and has been filed only to fill up the lacuna in the defence of the respondent-accused. At this belated stage, such a frivolous and malicious application should not have been allowed by the lower Appellate Court.

Hence, I find merit in the present Revision Petition and the same is hereby allowed. Consequently, the impugned order dated 24.04.2018 passed by the Addl. Sessions Judge, Pathankot in CRA No.11 of 2018 titled as Nishant Sharma Vs. Nitin Saini is hereby set aside.

Petition stands allowed accordingly.

22.03.2023
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No