

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-32465-2024
Decided on 11.07.2024

Surjit Singh & Ors.

... Petitioner

VS.

M/s Garg Textile

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. BS Jaswal, Advocate for the petitioner

Sandeep Moudgil, J.

(1). This is a petition under Section 482 CrPC filed by the petitioner seeking to quash the impugned order dated 08.05.2024 (Annexure P6) whereby his application for adducing the additional evidenced has been declined in CRA/84/2022 pending before Addl. Sessions Judge, Faridkot.

(2). The petitioner has sought to lead additional evidence to prove through an expert by filing application under Section 391 CrPC which according to the trial court, could not be exercised in view of the fact that the petitioner had already availed sufficient opportunities and the expert has already been examined. It is the case of the petitioner that the petitioner inadvertently could not examine the expert for proving the material alteration in the cheque in question inasmuch as the entry in the cheque was filled up by the complainant-respondent without the consent and knowledge of the petitioner and as such misused against him.

(3). A perusal of the impugned order dated 08.05.2024 (Annexure P6) would shows that the issue is regarding dishonor of cheque Ex.C2 dated 10.12.2017 of Rs.5,32,761/- issued by petitioner-Surjit Singh to the complainant having business dealings. Initially, the accused/petitioner

preferred an application on 01.06.2019 to examine handwriting expert and to take photographs of his signatures from his power of attorney, complaint and receipt signed by the complainant to compare it with standard signatures and the said application was allowed by the trial court vide order dated 04.06.2019. The petitioner preferred another application with similar prayer which too was accepted and ultimately, the trial court vide judgment and order dated 02.09.2022, convicted the petitioner-accused.

(4). The petitioner filed appeal and during its pendency, he applied again to examine the cheque in question by a document expert to prove the alterations qua figures and ink which has already been proved at the stage of the trial. The lower court has rightly observed that the Anil Kumar Gupta, Handwriting expert had already been examined and had there been any material discrepancy, as alleged the petitioner, the same would have been pointed out at the time when the said witness was examined not once but twice.

(5). Under the scheme of Code of Civil Procedure, 1908, whether oral or documentary, it is the trial court before whom parties are required to adduce their evidence. But in three exceptional circumstances additional evidence can be adduced before the appellate court, as provided under Section 107(1)(d) read with Rule 27 of Order XLI of the Code. Rule 27 of Order XLI reads as under: -

“27.Production of additional evidence in appellate court.—(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the appellate court. But if—

(a) The court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after

the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) The appellate court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the appellate court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an appellate court, the court shall record the reason for its admission.”

(6). Though the general rule is that ordinarily the appellate court should not travel outside the record of the lower court and additional evidence, whether oral or documentary is not admitted but Section 107 C.P.C., which carves out an exception to the general rule, enables an appellate court to take additional evidence or to require such evidence to be taken subject to such conditions and limitations as prescribed under Order 41 Rule 27 CPC. Nevertheless, the additional evidence can be admitted only when the circumstances as stipulated in the said rule are found to exist, namely - (i) the court from whose decree the appeal is preferred has refused to admit evidence, or (ii) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within the knowledge, or (iii) the appellate court requires any document to be produced for any other substantial cause. I draw support from the judgment passed by the Supreme Court in **North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (2008) 8 SCC 511.**

(7). In the case at hand, application was moved before the trial court seeking twice with the similar prayer to examine the handwriting expert to see whether there is any discrepancy in the cheque. Those applications were allowed on both occasions meaning thereby that sufficient opportunity was

granted to the petitioner-accused to establish his case and that such evidence was already in the knowledge of the petitioner regarding which he had exercised his discretion to examine such evidence at the trial stage itself. It is not the case of the petitioner the trial court had ever refused to accede to his request to adduce such evidence nor did the appellate court require examination of such evidence for proper adjudication of the case. So much so, the appellate court has the power to allow additional evidence only when if it requires such evidence 'to enable it to pronounce judgment' and also for 'any other substantial cause'.

(8). Since the piece of evidence in the form of handwriting expert which is sought to be now led was already in the knowledge of the petitioner and moreover, the said handwriting expert has since been examined in regard to alteration and omissions in the cheque at the time when trial proceedings were going on, the attempt made by the petitioner now to adduce the evidence only smacks of his crude intention just to delay the proceedings at the appellate stage. There is thus no infirmity in the order passed by the appellate court in rejecting the petitioner’s prayer for adducing additional evidence before it.

(9). Dismissed.

11.07.2024
V.Vishal

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

(Sandeep Moudgil)
Judge

- Yes/No
- Yes/No