104+219 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

1. CRM-A-1429-MA-2017(O&M)
Date of decision:18.03.2024

M/s KLMN Enterprises

...Applicant-Appellant

Versus

M/s Roshan Agro Steel Mills and another

...Respondents

2. CRM-A-1433-MA-2017 (O&M)
Date of decision:18.03.2024

M/s KLMN Enterprises

...Applicant-Appellant

Versus

M/s Roshan Agro Steel Mills and another

...Respondents

3. CRM-A-1450-MA-2017(O&M)
Date of decision:18.03.2024

M/s KLMN Enterprises

...Applicant-Appellant

Versus

M/s Roshan Agro Steel Mills and another

...Respondents

4. CRM-A-1469-MA-2017(O&M)
Date of decision:18.03.2024

M/s KLMN Enterprises

...Applicant-Appellant

Versus

M/s Roshan Agro Steel Mills and another

...Respondents

5. CRM-A-1482-MA-2017(O&M)
Date of decision:18.03.2024

M/s KLMN Enterprises

...Applicant-Appellant

Versus

M/s Roshan Agro Steel Mills and another

...Respondents

6. **CRM-A-1582-MA-2017 (O&M)**
Date of decision:18.03.2024

M/s KLMN Enterprises

...Applicant-Appellant

Versus

M/s Roshan Agro Steel Mills and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Dhirinder Chopra, Advocate
for the applicant-appellant(s)

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Harpreet Singh Brar, J. (Oral)

CRM-311325-2018 in CRM-A-1429-MA-2017, CRM-31062-2023 in CRM-A-1433-MA-2017, CRM-31137-2023 in CRM-A-1450-MA-2017, CRM-30802-2023 in CRM-30802-2023 in CRM-A-1469-MA-2017, CRM-30848-2023in CRM-A-1482-MA-2017 and CRM-31074-2023 in CRM-A-1582-MA-2017

These are the applications under Section 391 of the Cr.P.C. for leading additional evidence in the form Annexures A-11 to A-15.

Learned counsel for the applicant contends that the learned Judicial Magistrate First Class, Jalandhar acquitted the respondents vide judgment dated 21.04.2017 primarily on the ground that the appellant has failed to prove the business dealings between the parties. The applicant-appellant has also filed a Civil Suit No. 1234/14 titled *'M/s KLMN Enterprises v. M/s Roshan Agro Steel Mills and another'* for recovery of Rs. 15,89,977.40 from the respondents along with interest wherein Narinder, Tax Assistant, Officer of Principal Commissioner of Income Tax, Jalandhar appeared as PW5 and proved Annexures A-12 to A-15. Amongst these documents is Annexure of Sundry Creditors as on 31.03.2014(Annexure A-13) submitted by respondent no. 2-Balram Gupta wherein Rs. 14,03,476.40/- has been shown as due towards the applicant. He further submits that the applicant was not aware of the existence of these documents during the trial and has procured copies of the same from the Court of Civil Judge (Senior Division), Jalandhar. Since these documents (Annexure A-12 to A-15) are essential for just adjudication of the present application-appeal, learned counsel prays for them to be read into evidence.

This Court has heard the learned counsel for the applicant and perused the record, however, remains unsatisfied as to why the additional evidence being sought to be introduced at this stage could not have been led at the appropriate stage during trial. The applicant cannot be allowed to take shelter of Section 391 Cr.P.C. for its lack of due diligence.

Recently, two Judge bench of the Hon'ble Supreme Court in ***Ajitsinh Chehuji Rathod v. State of Gujrat and another*** Criminal Appeal @SLP(Crl.) No.16641 of 2023 decided on 29.01.2024, speaking through Justice Sandeep Mehta, has held as follows:

> *"9. At the outset, we may note that the law is well-settled by a catena of judgments rendered by this Court that power to record additional evidence under Section 391 CrPC should only be exercised when the party making such request was prevented from presenting the evidence in the trial despite due diligence being exercised or that the facts giving rise to such prayer came to light at a later stage during pendency of the appeal and that nonrecording of such evidence may lead to failure of justice."*

The complaint in the instant case was instituted in the year 2014. The documents being sought to be introduced as additional evidence came to the knowledge of the applicant after they were introduced in the civil suit for recovery, also instituted in the year 2014. Therefore, the documents were available but it was for the lack of due dilligence on the part of the applicant that they were not introduced during the trial.

The Himachal Pradesh High Court in ***Kewal Krishan v. State of H.P. and another 2023(2) Cri.CC 455***, speaking through Justice J.R. Dua has opined as follows:

> *“4(ii) In **(2019) 16 SCC 712 [Brigadier Sukhjeet Singh (Retired) MVC v. State of Uttar Pradesh & Ors]**, the Hon'ble Apex Court held that the key words in Section 391(1) are "if it thinks additional evidence to be necessary". T<u>he word "necessary" used in Section 391(1) is to mean necessary for deciding the appeal.</u> 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. The Hon'ble Apex Court noted the decision rendered in **(2001) 4 SCC 759 (Rambhau v. State of Maharashtra)**, wherein a word of caution was introduced for guidance "that additional evidence cannot and ought not to be received in such a way so as to cause any prejudice to the accused. It is not a disguise for a re-trial or to change the nature of the case against the accused. The order for adducing additional evidence must not ordinarily be made, if the prosecution has had a fair opportunity and has not availed of it. It was further held that there is no fetter on the power under Section 391 Cr.P.C of the Appellate Court. All powers are conferred on the Court to secure the ends of justice. While allowing the application moved under Section 391 Cr.P.C. by the accused in that case, Hon'ble Apex Court further held that it depends on facts of each and every case to come to a conclusion as to whether it is necessary to take additional evidence or not.”* (emphasis added)

Further, the Himachal Pradesh High Court in ***Jagdeep Kumar v. Himachal Pradesh State Co-operative Bank Limited 2019 (3) SLC 1354***, speaking through Justice Vikas Singh Thakur, has observed as follows:

> *“14. From the provisions of Section 391 Cr.P.C., 1973 and ratio of law laid down by the Apex Court, it emerges that Section 391(1) Cr.P.C., 1973 empowers the Appellate Court, dealing with any appeal under Chapter XXIX of Cr.P.C. either to take evidence itself or direct it to be taken by the Courts subordinate to it, but after recording the reasons, if it thinks that additional evidence is necessary. Undoubtedly, the Courts are there for dispensation of justice and necessary reasons for taking additional evidence at appellate stage must be in the interest of justice and for a just and proper decision of the Appellate Court, as not only the primary, but sole purpose of judicial machinery, is to impart justice. Therefore, <u>provisions of this Section should be invoked only for the ends of justice and not for any other reason. This Section is also not intended to remedy the negligence or laches of the party. It is also settled that</u>*

though power is unfettered, but the recourse to exercise of these powers are not to be made ordinarily in a situation where either of the parties did not avail the opportunity to adduce evidence and accused should not be allowed to adduce the defence evidence at appellate stage, where he has failed to adduce the evidence despite granting of several opportunities. Appellate Court should not admit additional evidence where the party had opportunity to file the same before the trial Court, unless the requirement of justice dictates otherwise." (emphasis added)

In view of the discussion above, this Court sees no merit in the present application and the same stands dismissed.

CRM-A-1429-MA-2017 and 5 connected cases

1. This common order shall dispose of all six of the above-mentioned cases as they arise from the similar factual matrix. However, for the sake of brevity, facts are culled out from CRM-A-1429-MA-2017.

2. The present application under Section 378(4) Cr.P.C. has been preferred against the judgment of acquittal dated 21.04.2017 passed by learned Judicial Magistrate Ist Class, Jalandhar in criminal complaint no. NACT/1040/2014 dated 21. 04.2017 filed under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter 'NI Act').

3. Briefly, the facts are that the applicant-appellant has been in business with respondent no.1- M/s Roshan Agro Steel Mills since many years. Respondent no. 2 is the proprietor of the respondent-firm and is also responsible for its day to day affairs. In the course of business, an outstanding amount of Rs. 14,03,207.40/- was payable to the applicant-appellant by the respondent firm. In discharge of its liability, a cheque bearing no. 269855 dated 30.12.2013 for Rs. 2,15,000/- was issued by respondents-accused on behalf of the firm. On presentation of encashment, the same was dishonoured vide memo dated 03.03.2014 with the remarks - 'insufficient funds.' Thereafter, a legal notice dated 10.03.2014 was served upon the respondents-accused calling upon them to make

the payment. However, the respondent-accused failed to pay the remaining amount in the stipulated time and the instant complaint was instituted.

4. Having heard the learned counsel for the applicant-appellant and after perusing the record of the case with his able assistance, it transpires that the signature on the disputed cheque have been duly admitted by the accused. However, the accused has stated that the disputed cheque was issued as security during business transaction. The petitioner-complainant had relied on copy of the account (Ex. C1) and ledger account (Ex. C2) to contend that Rs. 11,15,287/- was due against the respondents-accused, however, these documents were photocopies and permission to lead secondary evidence was not obtained. CW1-Mandip Nanda has taken a specific stand that the regular books are not maintained by him and that Rajesh Aggarwal, C.A. was responsible for auditing the same. He has categorically admitted that the ledger account was not audited by him. The petitioner-complainant has not been able to explain why the ledger account put on record was not duly maintained or audited. In fact, Ex. C2 is a batch of three loose papers with entries pertaining to respondent no.1.

5. In his cross-examination, the petitioner-complainant has admitted that the disputed cheque was not issued against the bill dated 25.06.2013. Therefore, it is clear that the cheque was issued against the running account and not against a specific bill. The petitioner-complainant has tried to salvage the situation by claiming that the disputed cheque was issued in lieu of another dishonoured cheque, however, it was in vain as no pleadings are proved against the alleged previously dishonoured cheque. CW3-Vikas Kumar, Tax Assistant has produced on record the documents pertaining to respondent no. 2 and in his cross-examination, he has stated that the returns from 2012 onwards, produced by him do not concern respondent no. 1-firm but respondent no. 2. Moreover, the legal

notice with regards to the disputed cheque fails to mention the details of the bill or the goods supplied against which the cheque was allegedly issued. Furthermore, in his cross-examination, the complainant could not even state the date, month and year of the cheque issued to him for clearance of dues. He also failed to state when was the last time he sold goods to the respondents-accused. Therefore, the presumption under Section 139 of the NI Act stands successfully rebutted.

6. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (**See H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others** passed CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on the acquittal of accused by the trial Court.

7. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-appellant has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present application and hence, the leave to appeal is denied.

8. Accordingly, all the above mentioned applications are disposed of in the aforementioned terms. Pending miscellaneous applications shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

18.03.2024
Ajay Goswami

Whether speaking/reasoned	*Yes/No*
Whether Reportable	*Yes/No*