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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH
117 CRR-2066-2024
Date of decision: 22nd October, 2024

Surjit Singh and another

...Petitioners

Versus

The State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sumeet Singh Brar, Advocate for the petitioners.
Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

MANISHA BATRA, J (ORAL):-

The present revision petition has been filed by the petitioner under Sections 438 read with Section 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') challenging the order dated 19.09.2024 passed by the Court of learned Sessions Judge, in criminal appeal No. CRA-85 of 2022 titled as 'Surjit Singh and another Vs. The State and another' whereby an application filed by the petitioner for granting them permission to lead additional evidence during the pendency of the petition, had been rejected.

2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the respondent No.2 which is a sole proprietorship concern under the proprietorship of one Sh. Dharampal, had filed complaint bearing CIS No. NACT-73-2018 titled as 'M/s Garg Textiles Vs. Surjit

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Singh and another' under Section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act') against the present petitioners on the allegations that the petitioners had purchased cloth material worth Rs.1,07,140/- from respondent No.2. To discharge their liability, the petitioners had issued a cheque for the aforementioned amount. This cheque when presented to the banker of respondent No.2, had been dishonoured with the remarks 'exceeds arrangement'. The respondent No.2 served legal notice upon the petitioners calling upon them to pay the amount of the cheque but in vain and therefore, he filed aforementioned complaint.

3. On considering the preliminary evidence produced on record by respondent No.2, learned trial Magistrate vide order dated 02.09.2022 issued process as against the present petitioners for commission of offence punishable under Section 138 of NI Act. The petitioner No.1 appeared on his behalf as well as behalf of the petitioner No.2 (being his sole proprietor) and faced trial. Vide judgment of conviction and order on quantum of sentence both dated 02.09.2022, the petitioner No.1, being proprietor of petitioner No.2, had been held guilty under Section 138 of NI Act and had been sentenced to undergo rigorous imprisonment for a period of one year. He was also directed to pay compensation to the tune of Rs. 1,07,140/-.

4. Feeling aggrieved by the judgment of conviction, the petitioners have preferred the above mentioned criminal appeal which is pending before the Court of learned Additional Sessions Judge, Faridkot. During the pendency of that appeal, the petitioners had moved an application under

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Section 391 of the Code of Criminal Procedure to grant him permission to produce additional evidence to prove that the cheque in question was a security cheque and the petitioner was having several receipts signed by respondent No.2 showing that respondent No.2 had already received more amount than due from the petitioners during the business transactions. The learned Appellate Court dismissed this application vide impugned order dated 06.09.2024 by observing that the same was not sustainable.

5. It is argued by learned counsel for the petitioners that the impugned order is not sustainable in the eyes of law as by way of the proposed additional evidence, they wanted to produce documents to show that several receipts had been issued by respondent No.2 in favour of the petitioner No.2 and the same proved that the entire amount of money which was payable by the petitioners to respondent No.2 and rather more than that amount had already been paid by him and no amount, whatsoever was due to be payable to respondent No.2. It is submitted that the proposed evidence was very much necessary for just decision of the case and by declining opportunity to the petitioners to produce the same, a grave prejudice has been caused to them. Therefore, it is urged that the impugned order is liable to be set aside, the petition deserves to be accepted and further that the learned Appellate Court is to be directed to permit the petitioners to produce additional evidence.

6. I have heard learned counsel for the petitioners at considerable length besides perusing the record.



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7. The petitioners by moving application under Section 391 of Cr.P.C. wanted to produce some evidence on record to show that the cheque in question was issued as a security cheque only and several receipts regarding receipt of the amount due to the petitioners, had been issued by respondent No.2. Undisputedly, as per Section 391 of the Code, the Appellate Court is competent to allow a party to the appeal to produce additional evidence, if it is considered to be necessary for just decision of the case. It is well settled proposition of law that powers under this Section are being in the nature of an exception that should always be exercised with caution and circumspection so to meet with the ends of justice. The nature, scope and object of the powers to be exercised under Section 391 of the Code was examined by Hon'ble Supreme Court in '***Zahira Habibullah H Sheikh and another Vs. State of Gujarat and others (2004) 4 SCC 158***', wherein it was observed that though under this provision, a wide discretion has been conferred, the powers could not be exercised for filling up any lacunae and the Appellate Court while taking of additional evidence was required to record reasons for the same. It was also observed that the powers under this Section are in the nature of exception to the general rule and same must be exercised with great care, lest the admission of additional evidence operates in a manner pre-judicial to the other party. The Hon'ble Supreme Court further observed that the primary object of Section 391 was the prevention of guilty man's escape through some careless or ignorant proceedings before a Court or vindication of an innocent person wrongfully

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accused. The legislative intent behind this provision was empowerment of the Appellate Court to see that justice was done between the prosecutor and the person prosecuted and that the proposed evidence was necessary in order to enable the Court to give correct and proper findings.

8. In view of the above proposition of law, it is explicit that the powers under Section 391 of the Code to allow additional evidence by the Appellate Court are of discretionary nature and are to be exercised sparingly and only in suitable cases. Additional evidence cannot be tendered at the appellate stage as a matter of right. Such power is to be exercised by the Appellate Court based on discretion, sound judicial principle and in the interest of justice and not to fill up gaps and lacunae in the evidence. In the instant case, the petitioners had been given due opportunity to produce evidence in their defence before the learned trial Court. They did not choose to adduce the same. The petitioner No.1 was held guilty and convicted under Section 138 of NI Act. It is only during the pendency of the appeal that the petitioners moved application under Section 391 of Cr.P.C. for producing certain receipts on record. It has not at all being explained as to how proposed additional evidence in the form of these receipts could not be adduced at the appropriate stage before the learned trial Court. Copies of these receipts have been placed on record and it has been revealed that many of these receipts which are photocopies are not having details about the person/concerned which has issued the same. These receipts pertain to the year 2010 onwards and it has not been explained as to how these receipts



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proved that the cheque in question was only by way of security cheque and was not issued by the petitioners to discharge their legally enforceable debt. The petitioners failed to produce these receipts at the appropriate stage and have also not given any explanation whatsoever for not producing the same during trial. In a recent pronouncement cited as '*Ajitsingh Chehuji Rathod vs. State of Gujarat and another, 2024 INSC 63*', it was observed by Hon'ble Supreme Court that power to record additional evidence 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 non recording of such evidence may lead to failure of justice. However, no such circumstance has been pointed out in this case. As such, in the considered opinion of this Court, learned Appellate Court had rightly dismissed the application moved by the petitioners and committed no material error. No infirmity could be pointed out by learned counsel for the petitioners in the impugned order passed by the Appellate Court so as to warrant interference by this Court in exercise of its revisional jurisdiction. Accordingly, finding no merit, the petition is dismissed.

9. Since the main petition has been dismissed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

22nd October, 2024

Parveen Sharma

1. Whether speaking/ reasoned
2. Whether reportable

: Yes / No
: Yes / No