



**115 THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M No.54524 of 2024
Date of Decision: 05.11.2024**

Vinay Kumta

..... Petitioner

Versus

M/s Kanha Jewellers, Gurugram

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Kamal Chaudhary, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (ORAL)

1. Present petition has been filed praying for quashing of order dated 08.10.2024 (Annexure P-5) whereby the application under Section 391 Cr.P.C. for leading additional evidence in Criminal Appeal No.CRA-527-2019 was rejected without looking into the merits of the application. Further prayer has been made for staying all consequent proceedings qua the petitioner during the pendency of the present petition.

2. It has been submitted by learned counsel for the petitioner that the petitioner has been prosecuted by the complainant-respondent by filing the complaint under Section 138 & 142 of Negotiable Instruments Act and 420 of IPC. He has submitted that during the trial, the learned trial Court allowed the complaint and the petitioner was convicted vide order dated 01.10.2019 by the learned Judicial Magistrate Ist Class, Gurugram wherein the petitioner was sentenced for rigorous



imprisonment of 01 year and was also directed to pay the compensation to the tune of Rs.18,00,000/-. Being aggrieved, the petitioner filed an appeal against the judgment of conviction dated 01.10.2019 before the learned Sessions Judge Gurugram, which is pending adjudication. He has submitted that during the pendency of the appeal, the petitioner filed an application under Section 391 Cr.P.C. for adducing the additional evidence on inquiry by stating that the respondent had filed the criminal complaint under Section 138 of Negotiable Instruments Act on the basis of the alleged cheque bearing No.166045 dated 12.05.2016 whereas cheque Nos.166046 & 166047 including cheque No.166045 which are of the same series were given to Surender Sethi on 10.11.2014 as shown in the agreement of mortgage. He has submitted that while cross examining the respondent, namely, Nikhil Garg, the petitioner had put specific name of Surender Sethi with whom the respondent had colluded and filed the false and frivolous complaint. However the respondent had totally denied that he knew Surender Sethi, who lived in Gurugram. He has submitted that as per the provisions of Section 391 Cr.P.C., the application filed by the petitioner for adducing the additional evidence should have been allowed, however the same has been illegally declined by the learned Appellate Court. He has submitted that the respondent and Surender Sethi very well knew each other but the same has been denied by the respondent during his cross examination. Thus, he submits that summoning of additional evidence as prayed by the petitioner is necessary for just decision of the case but the learned Appellate Court has



failed to appreciate the same and thus has illegally declined the application filed by the petitioner. He has thus submitted that the impugned order being totally unsustainable in the eyes of law, deserves to be set aside.

3. Heard.

4. On hearing learned counsel for the petitioner and perusing the record, it is apparent that the petitioner has been prosecuted by the respondent in the complaint filed under Section 138/142 of Negotiable Instruments Act and he was convicted by the trial Court vide order dated 01.10.2019 which has been assailed by the petitioner by filing the appeal before the Appellate Court. During the appeal, the petitioner has filed the application under Section 391 Cr.P.C. for summoning of Mr. Sunny Tanwar, Advocate, District Court, Gurugram, who allegedly took photographs and made videography of complainant Nikhil Garg and Surender Sethi when they were present in the chamber of Mr. Subhash Grover, Advocate and were talking to each other and thereafter they were seen leaving the District Court premises on Activa bearing registration No.HR26DJ-1031 owned by Surender Sethi. Further prayer has been made by the petitioner for summoning of a witness from the office of registration authority to prove ownership of said scooter and to establish the fact that Mr. Nikhil Garg and Surender Sethi were familiar and knowing each other and were in good relation and in order to implicate the present petitioner in a false case, they colluded with each other. As evident from the record, the complainant had explained the fact that his



counsel as well as counsel for Surender Sethi was the same and both had filed the cases against the petitioner which had been prosecuted through the same lawyer.

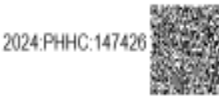
5. For invoking the power under Section 391 Cr.P.C., the Court has to examine whether the evidence sought to be produced was available with the party at the time of leading his evidence. The Court also has to examine whether the application for leading evidence sought to be produced has been filed only in order to delay the proceedings. The evidence sought to be produced should be essential for just decision of the case. The case in hand pertains to the prosecution of petitioner in the complaint filed under Section 138/142 of Negotiable Instruments Act. The evidence sought to be produced by the petitioner does not effect the merits of the case.

6. The petitioner has not mentioned as to when the additional evidence sought to be produced before the Appellate Court came to his notice and what prevented him from producing the same before the trial Court at an earlier stage.

7. Hon'ble the Supreme Court in "**Rambhau vs. State of Maharashtra**", 2001(2) RCR (Criminal) 721 has held as under:

“ XXXXX

Para 4: Incidentally, Section 391 forms an exception to the general rule that an Appeal must be decided on the evidence which was before the Trial Court and the powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice. Be it noted further that the doctrine of finality of judicial proceedings does not stand annulled or affected in



any way by reason of exercise of power under Section 391 since the same avoids a de novo trial. It is not to fill up the lacuna but to sub-serve the ends of justice. Needless to record that on an analysis of the Civil Procedure Code, Section 391 is thus akin to Order 41 Rule 27 of the C.P. Code.”

8. Recently in the judgment of “**Ajitsin Chehuji Rathod vs. State of Gujarat and another**”, **2024(1) RCR (Criminal) 804**, the Hon’ble Supreme Court has held as under:

“ xxxxx

Para 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 Cr.P.C., 1973 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.”

9. Thus at this stage, leading the additional evidence do not meet the essential ingredients for invoking the power under Section 391 Cr.P.C.

10. Thus this Court does not find any infirmity in the view taken by the learned Appellate Court and hence, finding no merit in the present petition, the same is hereby dismissed.

05.11.2024
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(RAJESH BHARDWAJ)
JUDGE

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