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**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH****CRM-M-60609-2019****Date of Decision: 03.12.2024****SHEKHAR YADAV****.....PETITIONER****VERSUS****M/s MEER SINGH FUEL POINT****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Himanshu Rao, Advocate
for the Petitioner(Through VC)

SANDEEP MOUDGIL, J

1. This petition has been filed under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023, with a prayer to quash the impugned order dated 16.09.2024,(Annexure P-5) passed by the learned Additional Sessions Judge, Gurugram, dismissing the application of the petitioner filed under Section 391 Cr.P.C. in CRA 345 of 2018, under Section 138 of the Negotiable Instruments Act, 1881.

2. It is contended by the learned counsel for the petitioner that the application has been illegally and erroneously dismissed by the learned Additional Sessions Judge, Gurugram (for short referred as 'Appellate Court') without appreciating the necessity to file the said application. The learned trial Court has erred in not appreciating the fact that as per the version of the respondent, fuel was supplied to M/s Likhi Ram and Sons and it is not proved on record as to whether petitioner is the proprietor of the said firm and the petitioner has taken stand that the bills in question



have not been proved in accordance with law and the payment towards the alleged bills have already been made by the firm. It is after the filing of the appeal that the petitioner got the receipts of payment made to the respondent and immediately filed an application under Section 391 Cr.P.C. to lead additional evidence by placing on record the receipts of an amount of Rs.23,50,000/- already paid by the petitioner to the respondent on various dates as the original receipts could not be tendered by him before the learned trial Court due to misplacement of the same during shifting of office.

3. Learned counsel for the petitioner relies upon the judgment of this court passed on 11.10.2018 in CRR-4294 of 2015 titled as “Asja Rani versus Gurjeet Kaur” to contend that the trial Court had granted 20 adjournments to produce the evidence and despite that the application under Section 391 Cr.P.C. was allowed by the learned Appellate Court. As such, the approach of the learned Appellate Court in dismissing the application of the petitioner under Section 391 Cr.P.C. is erroneous on the face of it, which renders the impugned order liable to be set aside.

4. Heard and case file also perused.

5. Perusal of the case file shows that the petitioner was an accused in the complaint under Section 138 of the Negotiable Instruments Act, 1881, titled “M/s Meer Singh Fuel Point Vs. Shekhar Yadav” and the allegation against the accused/petitioner in the complaint is that complainant supplied diesel to M/s Likhi Ram & Sons, belonging to the accused, vide different bills dated 31.07.2015, 16.08.2015 and 31.08.2015 and in lieu to discharge the legal liability, the accused issued a cheque bearing No.000107 dated 31.12.2015 amounting to Rs.25,76,000/- drawn



on HDFC Bank Limited, Commercial Shopping Gurgaon, in favour of the complainant, which on presentation was dishonoured vide memo dated 04.01.2016 with the remarks "Account closed". Thereafter, legal notice served upon the accused also remained unfruitful and the complaint followed.

6. The accused/petitioner has been convicted by the learned trial Court by analyzing from cumulative effect of non-denial from issuance of cheque; non-reply to the legal notice; non-filing of any complaint with the police about misuse of cheque and failure to raise any probable defence by the accused, by holding him guilty of the offence under Section 138 of the Negotiable Instruments Act, vide judgement dated 13.06.2018.

7. Aggrieved from the judgment of conviction, the petitioner filed appeal before the Court of Session at Gurugram and thereafter filed application under Section 391 Cr.P.C. to lead additional evidence which has been dismissed by the learned Appellate Court by observing that trial Court had given approximately six opportunities to the applicant to produce the evidence but he had not produced any evidence and thereafter the learned trial court had decided the case.

8. Law is well settled by catena of judgments that power to record additional evidence under section 391 Cr.P.C should only be exercised when the party making such request was prevented from presenting the evidence in the trial despite due diligence being exercised. Power to record additional evidence at the appellate stage should not be exercised in a routine and casual manner. Such a power shall only be exercised when non-recording of the evidence may lead to failure of justice.



9. The Apex court in “**Ajitsinh Chehuji Rathod vs State of Gujarat and Anr Criminal Appeal@SLP(Crl) No. 16641 of 2023**” has held as under:-

16. Thus, we are of the view that if at all, the appellant was desirous of proving that the signatures as appearing on the cheque issued from his account were not genuine, then he could have procured a certified copy of his specimen signatures from the Bank and a request could have been made to summon the concerned Bank official in defence for giving evidence regarding the genuineness or otherwise of the signature on the cheque.

17. However, despite having opportunity, the accused appellant did not put any question to the bank official examined in defence for establishing his plea of purported mismatch of signature on the cheque in question and hence, we are of the firm opinion that the appellate Court was not required to come to the aid and assistance of the appellant for collecting defence evidence at his behest. The presumptions under the NI Act albeit rebuttable operate in favour of the complainant. Hence, it is for the accused to rebut such presumptions by leading appropriate defence evidence and the Court cannot be expected to assist the accused to collect evidence.

10. Coming to the facts of the instant case, it is pertinent to mention that if the receipts were in the possession of the petitioner then why he had not produced the same before the learned trial court. Neither he has filed a copy of the receipts with the application, due to which respondent could not file a proper reply. Meaning thereby, when no copy of receipt had been filed with the application, it can be well said that the petitioner was himself negligent in not producing those receipt before the learned trial court as well as before the appellate Court and only on the

basis of application, it cannot be assumed that additional evidence is necessary at this stage

11. The above observations of the learned Appellate Court coupled with the dictum discussed in Ajitsinh’s case (Supra) leave no manner of doubt that the petitioner himself was negligent in adducing proper evidence before the learned trial Court. Even if, the receipts, as claimed, were misplaced during shifting of the office, the accused/petitioner had other means also to show the payments made to the complainant by showing bank entries or by putting question/cross-examining to the complainant. Rather the accused/petitioner has taken a different defence of misusing of cheque, which, otherwise, does not match with the plea of production of receipts by way of filing application under Section 391 Cr.P.C., now sought to be placed on record by the petitioner. Therefore, the learned Appellate Court has rightly dismissed the application of the petitioner.

12. In view of the above discussion, the judgment relied upon by the petitioner does not hold good in present facts of the case.

13. Therefore, in view of the above stated situation, this Court does not find any error in the well-reasoned order of the learned Additional Sessions Judge, Gurugram, dated 16.09.2024, Annexure P-5, which is upheld and the present petition is hereby ordered to be dismissed.

(SANDEEP MOUDGIL)
JUDGE

03.12.2024
anuradha

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