

2025:PHHC:065313



**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

137

CRM-M-26483-2025 (O&M)

Date of decision: 15.05.2025

Rameshwar Verma**...Petitioner****Versus****Gurmeet Singh and another****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Wazir Singh, Advocate
for the petitioner.

Mr. Garvit Mittal, Advocate
for respondent No. 1.

MANISHA BATRA, J. (Oral)

1. This petition has been filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) for setting aside the order dated 02.05.2025 (Annexure P-3), passed by the Court of learned Additional Sessions Judge, Karnal (*hereinafter referred to as 'appellate Court'*) in Criminal Appeal No. 361 of 2018, titled as ***Rameshwar Verma vs. Gurmeet Singh***, whereby an application filed by the petitioner under Section 391 of Cr.P.C. (*which is pari materia with Section 432 of BNSS*) has been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that respondent No. 1 had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'the Act'*) against the present petitioner alleging that the petitioner had issued a cheque in favour of respondent No. 1 to discharge his legally enforceable liability but the same had been dishonoured and the petitioner had failed to make payment of the

2025:PHHC:065313



cheque amount. On considering the preliminary evidence adduced therein, the learned trial Court had issued process under Section 138 of the Act against the petitioner. The petitioner faced trial and had been held guilty and convicted for the aforesaid offence, vide judgment dated 08.05.2018, passed by the Court of learned Sub Divisional Judicial Magistrate, Indri. Feeling aggrieved from the judgment of conviction, the petitioner has filed the aforesaid appeal on 02.06.2018 before the learned appellate Court, which is pending.

3. The petitioner filed aforesaid application before the learned appellate Court making prayer for allowing him to produce and examine by way of additional evidence, the concerned clerks from the HDFC Bank, Indri Branch, Head Post Office, Karnal and Income Tax Department respectively by saying that their examination was necessary for proper adjudication of the appeal. After taking reply from the respondent and hearing the arguments, the learned appellate Court dismissed the application by making the following observations:

“4. It is revealed in this case that appellant/convict has been held guilty vide judgment dated 8.5.2018 under section 138 of Negotiable Instruments Act and has been sentenced for the imprisonment for one year □ and to pay 2,52,000/- with 9% p.a. interest from the date of order dated 11.5.2018. Appeal was filed on 2.6.2018 and abovesaid application was filed on 23.8.2020, when case was fixed for arguments on appeal. It is stated that convict-appellant wants to examine concerned clerk from HDFC Bank, clerk from Post office concerned and clerk from the office of Income Tax Department, Karnal but it is nowhere stated what had prevented him from examining the said witness before the learned trial court in his defence. Reason given by convict/appellant that he has now

2025:PHHC:065313



changed the counsel is not justified and appears to fill up lacunae and lingering on the matter. Case cannot be re-opened in appeal by way of granting permission to lead evidence again here especially when he got ample opportunities to lead his evidence at the appropriate stage before trial court. Reference is made to the authority titled as Harkesh Chadha vs. The State and another, Law Finder Doc ID # 2024599 wherein it has been held as under:

Allowing application under Section 391 of the Code would result in retrial of the case. Petitioner initiated legal proceedings for filing additional evidence at much belated stage with intention to delay final disposal of appeal. Petitioner did not assign any reason of filing these documents at stage of consideration of appeal. Petitioner only mentioned that due to inadvertence documents could not be placed on record which is not enough good and justified to allow application under Section 391 of the Code. Decision of the Trial Court would not be changed even if these documents are received as additional evidence and taken into consideration as the trial considered the defence of the petitioner in detail and not accepted by giving detailed and cogent reasons. Appellate Court rightly dismissed the application under Section 391 of the Code in case pertaining to section 138 of the Negotiable Instruments Act.

5. Furthermore, the reason given for leading these additional evidence is also cryptic and it is not stated by convict-appellant how he would be able to disprove the allegations of committing offence under section 138 of Negotiable Instruments Act already proved against him before learned Trial Court.

2025:PHHC:065313



6. In view of the above discussion made on the application, it is not justified on the part of the convict to examine any witness in this case by way of additional evidence and application is devoid of merits and liable to be dismissed. Ordered accordingly. Now to come up on 13.5.2025 for arguments on appeal.

6. Aggrieved from the abovementioned order, the present petition has been filed.

7. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as while passing the same, the learned appellate Court ignored the fact that the production of proposed additional evidence was very much essential for just decision of the appeal pending before it. The proposed witnesses are required to be examined to disprove the claim of respondent No. 1 qua financial transactions between the parties. The stand taken by the respondent was that he had withdrawn an amount of Rs.2.5 Lakhs from the bank, which was handed over to the petitioner. However, in fact it was not so and by producing the proposed additional evidence, the petitioner could prove so but has been deprived of that opportunity. It is, therefore, urged that the impugned order be set aside, the petition be accepted and the learned appellate Court be directed to grant opportunity to the petitioner to adduce additional evidence. To fortify his arguments, learned counsel for the petitioner has relied upon the authority cited as ***Brig. Sukhjeet Singh (Retd.) MVC vs. the State of Uttar Pradesh and others, 2019 (1) RCR (Criminal) 895.***

8. Notice of motion.

9. At this stage, power of attorney has been filed on behalf of respondent No. 1.

2025:PHHC:065313



10. Learned counsel for respondent No. 1 has argued that there is no infirmity or illegality in the impugned order passed by the learned trial Court as the application for granting permission to adduce additional evidence had been moved by the petitioner 05 years after filing of the appeal and just to delay the disposal of the same since he had been held guilty and convicted. It is further argued that the proposed evidence was neither essential nor required for just decision of the case. The petitioner had failed to give any reasonable explanation for not producing the additional evidence at the appropriate stage and had also failed to explain as to how the proposed additional evidence was going to have bearing on the case. Accordingly, it is urged that the petition is devoid of any merits and is liable to be dismissed. To fortify his arguments, learned counsel for respondent No. 1 has relied upon the authorities cited ***as Ajitsinh Chehuji Rathod vs. State of Gujarat and another, 2024 (1) RCR (Criminal) 804, D. N. Singla (Dina Nath Singla) vs. M/s Master Capital Services Limited, 2024 (2) RCR (Criminal) 440 and Rambhau and another vs. State of Maharashtra, 2001 (2) RCR (Criminal) 721.***

8. The rival contentions raised by both the parties have been given due deliberation.

9. Section 432 of BNSS (*which is pari materia with Section 391 of Cr.P.C.*) empowers the appellate Court to take further evidence or direct it to be taken. Undoubtedly, there are no fetters on the power of the appellate Court under this provision since the ultimate object of the same is to secure the ends of justice. It is, however, well settled proposition of law that the power to allow production of additional evidence is to be exercised with great caution and circumspection and not in a casual manner. Request of a party to entertain

2025:PHHC:065313



and allow the application for additional evidence can be allowed only if it is clear that the same is not made in order to vex the proceedings or delay the same. Reliance in this regard can be placed upon the observations made by Hon'ble Supreme Court in ***Dr. Rajesh Talwar and another vs. C.B.I. and another, 2014(1) SCC (Cri.) 493***. In ***Rambhau***'s case (supra), it was observed by Hon'ble Supreme Court that additional evidence is not a disguise for a re-trial or to change the nature of the case against the accused. Additional evidence cannot and ought not to be received in such a way so as to cause any prejudice to the accused or complainant and the discretion vested in the Court should be exercised with caution. Similar was the proposition of law as laid down in ***D. N. Singla***'s case (supra) and ***Ajitsinh***'s case (supra).

9. In the instant case, the petitioner, who was accused in the original complaint and had been convicted, has filed appeal before the learned appellate Court as on 02.06.2018. The aforesaid application seeking production of additional evidence had, however, been filed by him after a gap of 05 years from the date of filing the said appeal. It is apparent on the face of record that this application had been moved only with a purpose to prolong the disposal of the appeal, since if the petitioner was actually interested to produce any additional evidence and that was required for just decision of the case, then he could have produced the same during trial and if not at that stage, then at least the application for producing this evidence could have been filed at the time of filing of appeal but for the reasons unknown, he waited for a long period of about 05 years and then moved this application. More so, learned counsel for the petitioner has not been able to explain as to how the proposed evidence would help the learned appellate Court in just decision of

2025:PHHC:065313



the case. Learned appellate Court, while passing the impugned order, had made detailed discussion and the observations made by it are well reasoned. As such, it had committed no error in dismissing the aforesaid application. Accordingly, finding no merit in the present petition, the same is dismissed.

15.05.2025
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>