



**114 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR-1685-2025

Date of decision : 15.07.2025

Purvanchal Jan Chetna Samiti and another

.....Petitioners

versus

Rajesh Kumar

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Girdhari Shanker Verma, Advocate
for the petitioners.

RAJESH BHARDWAJ, J. (Oral)

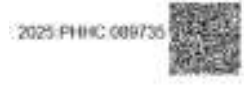
1. Prayer in the present petition has been made for setting aside of impugned order dated 19.05.2025 passed by learned Additional Sessions Judge, Palwal, Haryana in case CRA No.68 of 2022 dated 01.09.2022 titled as '**Purvanchal Jan Chetna Samiti Vs. Rakesh Kumar**', arising out of complaint case No.29 of 2016 dated 03.05.2016, vide which the learned Court below had wrongly dismissed the application under Section 391 Cr.P.C. filed by the applicant/petitioner for adducing additional documentary evidence and to examine Criminal Court Ahalmad of Ld. Court below. Further prayer has been made for staying the operation of the impugned order.

2. It has been contended by learned counsel for the petitioners that the petitioners were prosecuted by the respondent/complainant in complaint under Section 138 of Negotiable Instruments Act. He submits that on conclusion of the trial, the petitioners were convicted by the learned Additional Chief Judicial Magistrate, Palwal vide order dated 03/04.08.2022, wherein the petitioners were sentenced to undergo rigorous imprisonment for a period of 01 year and to pay a fine of



Rs.1000/-. He submits that aggrieved by the same, the petitioners assailed the same by way of filing of an appeal before the learned Appellate Court. It is submitted that during the pendency of the appeal, petitioners filed an application under Section 391 Cr.P.C. for adducing the additional evidence. He submits that the petitioners want to examine the Hand-writing expert to prove that the cheque was not issued by them in favour of the respondent. He submits that producing the additional evidence is essential for the just decision of the case, however, learned Appellate Court has miserably failed to appreciate the same and thus, has illegally declined the same. He relies upon the judgment passed by Metropolitan Magistrate (NI Act) at South, Saket District Court for offence under Section 138 of NI Act in '***Darshan Singh Bhandari Vs. Ravinder Kumar***'. He submits that the view taken by the learned Appellate Court in declining the application filed, being against the law settled, deserves to be set aside and thus, the application filed by the petitioners under Section 391 Cr.P.C., be allowed. He thus, submitted that the impugned order being totally unsustainable in the eyes of law, deserves to be set aside.

3. This Court has heard learned counsel for the petitioners and perused the record with his able assistance. It is deciphered that the petitioners before this Court are the accused, who were convicted by the learned trial Court vide order dated 03/04.08.2022 in the complaint filed by the respondent under Section 138 of Negotiable Instruments Act, which has been assailed by the petitioners by filing the appeal before the Appellate Court. During the appeal, the petitioners had filed an application for leading the additional evidences under Section 391 Cr.P.C. The precise submission made is that the petitioners wanted to examine the hand-writing expert as an additional evidence. The perusal of the record



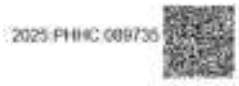
would show that the petitioners was given ample opportunities for leading their evidences and cross-examine the complainant and his witnesses. The complainant was cross-examined at length by the accused/petitioners. The contentions raised by counsel for the petitioners that examination of the hand-writing expert is essential for the just decision of the case, however, during their examination the accused/petitioner himself had admitted that the cheque in question was delivered by them. Thus, the contentions raised that the examination of the hand-writing expert is essential for the just decision of the case, loses its significance.

4. 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 of Negotiable Instruments Act. The evidence sought to be produced by the petitioners does not effect the merits of the case.

5. 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.”

6. 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.”

7. Thus, at this stage, leading the additional evidence do not meet the essential ingredients for invoking the power under Section 391 Cr.P.C. Hence, this Court does not find any infirmity in the view taken by the learned Appellate Court and thus, finding no merit in the present petition, the same is hereby dismissed.

15.07.2025
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(RAJESH BHARDWAJ)
JUDGE

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