



**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-80-2021 (O&M)
Reserved on : 03.02.2026
Pronounced on : 25.02.2026

M/s Supertech Machines Pvt. Ltd.

..... Petitioner

VERSUS

M/s Ebullient Cables Pvt. Ltd. & Ors.

..... Respondents

CORAM: HON'BLE MR. JUSTICE SURYA PARTAP SINGH

Argued by : Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Vishal Garg Narwana, Advocate,
Mr. Nitin Sachdeva, Advocate and
Ms. Nancy Antwal, Advocate for the petitioner.

Mr. Akhil Sharma, Advocate and
Mr. Vidul Kapoor, Advocate for the respondents.

SURYA PARTAP SINGH, J.

Aggrieved of the order dated 07.03.2020, whereby the application under Section 391 of Code of Criminal Procedure has been allowed, passed by the Court of learned Additional Sessions Judge Faridabad, hereinafter being referred to as 'impugned order', the present revision petition has been preferred by the petitioner/complainant, hereinafter being referred to as 'petitioner' only.

2. The abovementioned order has been passed in an appeal, on an application under Section 391 Cr.P.C., filed by the respondents/convicts. By allowing the abovementioned application the respondents/convicts, hereinafter being referred to as 'respondents' only, were permitted to lead additional evidence at appellate stage.



3. Briefly stating the facts emerging from record are that, that for the commission of offence punishable under Sections 138/142 of Negotiable Instruments Act, a complaint was filed by the petitioner against the respondents. In the abovementioned complaint seven accused were prosecuted, and by virtue of judgment of conviction dated 04.12.2018 the abovementioned complaint culminated into conviction of the respondents. As a result thereof, vide order of even date on quantum of sentence, all the respondents were awarded the sentence, accordingly.

4. Aggrieved of the abovementioned judgment of conviction and order of sentence, the respondents preferred an appeal in the Court of Sessions. The abovementioned appeal is being dealt with by the learned Additional Sessions Judge Faridabad, hereinafter being referred to as 'Appellate Court' only.

5. In the abovementioned appeal, the application under Section 391 of CrPC was moved by the respondents, on the ground that during the course of trial, the petitioner had taken a plea that in order to prove existing liability, the petitioner had taken a stand that the petitioner had sent a performa invoice (Ex.C-10) through courier to the respondents. According to respondents the receipt issued by courier company was proved by the petitioner on record, and it was showing that service of 'Mahavir Courier Service Pvt. Ltd.' Faridabad was taken for the delivery of performa invoice (Ex.C-10). As per respondents, the petitioner was duly cross-examined on the abovementioned point, and that on the basis of personal efforts made by the respondents, it was found that the receipt relied upon by the petitioner



was never issued by the abovenamed courier company. The respondents further alleged that thereafter, the respondents approached the police and requested to conduct an enquiry with regard to the same issue. As per respondents the enquiry had been conducted by the police and the report was submitted.

6. By virtue of abovementioned application, the respondents sought permission to examine the concerned person of Courier Company, along with record. In addition to above the concerned official of Economic Offences Wing of Faridabad Police, along with Enquiry Report, too, was sought to be examined.

7. The abovementioned application was contested by the petitioner. It was alleged by the petitioner that the application under Section 391 of CrPC was moved with a sole motive to frustrate the petitioner, and force the petitioner to enter into settlement with the respondents. According to petitioner, at the time of trial adequate opportunity was afforded to the respondents to lead their evidence in defence. It was also alleged by the petitioner that in defence evidence the respondents had sought examination of nine witnesses, but in the list of witnesses placed on record by the respondents, the name of any official of courier company was not mentioned.

8. The petitioner also alleged that even an application under Section 311 of CrPC was filed by the respondents, but in that application also, there was no request for summoning of official of 'Mahavir Courier Service Pvt. Ltd.', as defence witness. While claiming that powers under



Section 391 CrPC are supposed to be used sparingly with regard to evidence, which is essential, only, the petitioner sought for dismissal of abovementioned application.

9. Heard.

10. It has been contended by learned Senior Counsel for the petitioner that the learned Appellate Court has fallen into error of judgment when it allowed the application under Section 391 CrPC, merely on the basis of assumptions and presumptions. As per learned Senior Counsel for the petitioner, right from the very beginning it was the stand of the petitioner that performa invoice (Ex.C-10) was served upon the respondents and once the respondents adopted a denial mode, they must have proved their stand. As per learned Senior Counsel, the respondents had an opportunity to impeach the claim of delivery of performa invoice (Ex.C-10), at the time of proving the abovementioned document and secondly, on the occasion of defence evidence. According to learned counsel for the petitioner, the petitioner did not opt to produce any evidence to impeach the credibility of performa invoice (Ex.C-10).

11. It has been further contended by learned Senior Counsel for the petitioner that the respondents are well-connected with the Police Department Faridabad, and that they exercise influence upon the police officials in the District due to political clout. According to learned Senior Counsel for the petitioner, after the conviction of respondents by the learned trial Court, the respondents under a well hatched conspiracy filed a complaint before the police official, challenging therein the credibility of



claim of the petitioner with regard to delivery of performa invoice (Ex.C-10) upon the respondents through courier. As per learned Senior Counsel for the petitioner, once the matter was already pending before the Court, the only course available to the respondents was to impeach the credibility of abovementioned evidence in the Court, but only after conviction by adopting a strange method, they filed a complaint before the police and procured a report in their favour by Economic Offence Wing Faridabad Police. As per learned Senior Counsel, when the complaint under Section 138 of NI Act was already pending and the document (Ex.C-10) was already relied upon by the learned trial Court in its judgment, the Economic Offences Wing had no business to enquire into the veracity of that evidence. While claiming that initiation of an enquiry in a sub-judice matter, in itself, is an abuse of process of law, the learned Senior counsel for the petitioner has urged that the above-mentioned enquiry report is nothing but as waste paper and therefore, the same can't be taken into consideration.

12. In addition to above, the learned Senior Counsel for the petitioner has also contended that the scope for the exercise of jurisdiction vested under Section 391 of CrPC is very limited, and that at appellate stage, the abovementioned jurisdiction can be exercised in rarest of rare cases only. According to learned Senior Counsel, in the present case when there was no plea of the respondents that opportunity to defend themselves was denied to them by the learned trial Court, the exercise of jurisdiction vested under Section 391 CrPC at appellate stage was illegal. While claiming that the impugned order is suffering from illegality and perversity, the learned Senior



Counsel has sought for exercising of revisional jurisdiction of this Court, and urged that by accepting the present petition the impugned order be set aside. In support of his arguments, the learned Senior Counsel has relied upon the principles of law laid down by the Hon'ble Supreme Court of India in the case of 'Ajitsinh Chehuji Rathod v. State of Gujarat & Anr.' AIR 2014 SC 787.

13. The learned counsel for the respondents has controverted the abovementioned arguments. While defending the impugned order, it has been contended by learned counsel for the respondents that it is settled principles of law that the purpose of a trial is to arrive at a just decision, and that in the name of technicalities, the goal of delivering justice should not be ignored. According to learned counsel for the respondents, in the present case one of the crucial questions to be adjudicated upon by the Courts is the existing liability of the respondents to make payment to the petitioner. As per learned counsel for the respondents, if the petitioner would fail to prove that there was any existing liability of the respondents to pay money to the petitioner, the very foundation or purpose for issuing the cheque would stand demolished and therefore, in that eventuality, the prosecution of respondents for the commission of offence under Section 138 of NI would not end into success for the petitioner.

14. According to learned counsel for the respondents, in the present case one of the pleas raised by the petitioner, with regard to existing liability of respondents, was that there were business dealings between the parties and according to abovementioned business dealings for the goods/machines



supplied by the petitioner to the respondents, there was existing liability towards the respondents. As per learned counsel for the respondents, it was claimed by the petitioner that in order to discharge the abovementioned liability the cheque in question was issued, (which was dishonoured by the banker of respondents).

15. With regard to above, the learned counsel for the respondents has argued that to support its stand with regard to existing liability, it was claimed by the petitioner that performa invoice (Ex.C-10) was served upon him through 'Mahavir Courier Service Pvt. Ltd.', and that in fact, the abovementioned courier company never delivered performa invoice upon the respondents. As per learned counsel for the respondents, the abovementioned facts are necessary to be proved on the record, to impeach the creditability of the claim of the petitioner.

16. In view of above, it has been contended by learned counsel for the respondents that in the present case, to prove the fact that performa invoice (Ex.C-10) was never delivered to the respondents, the concerned person of courier company along with record, and the official of Economic Offences Wing Faridabad Police along with Enquiry Report, are necessary to be examined as witnesses. While claiming that by examination of abovementioned witnesses the truth will come on surface and therefore, there should not be any legal objection qua the examination of abovementioned witness, the learned counsel for the respondent has contended that the present petition has been filed without any justification.



The learned counsel for the respondents has argued that there is no merit in the present petition and the same deserves dismissal.

17. In support of his arguments, the learned counsel for the respondents has referred to the principles of law laid down by the Hon'ble Supreme Court of India in the case of 'Rambhau V/s State of Maharashtra' AIR 2001 SC 2120, wherein it has been observed that Section 391 of CrPC forms an exception to the general rule, that an appeal must be decided on the evidence, which was before the learned 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.

18. The learned counsel for the respondent has also referred to the principles of law laid down by the Hon'ble Supreme Court of India in the case of 'Brig. Sukhjeet Singh (Retd.) MVC V/s State of Uttar Pradesh & Ors.' 2019(16) SCC 712, wherein it has been observed that power to take additional evidence under Section 391 CrPC is with an object to appropriately decide the appeal by the Appellate Court to secure justice. According to Hon'ble Supreme Court of India in the abovementioned case, the additional evidence so produced, must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it.

19. The learned counsel for the respondent has also relied upon the principles of law laid down by this Court in CRM-M-23768-2017 titled as 'Swaraj Mazda Ltd. V/s Vijay Pal Adhana', wherein it has been observed that initial onus to prove that the cheques in question were issued to



discharge the admitted/existing legally enforceable debt or liability, was upon the complainant. In the abovementioned case, this Court dismissed the petition challenging the order, whereby the learned Appellate Court had accorded permission to lead additional evidence in exercise of jurisdiction vested by virtue of Section 391 of CrPC.

20. The record has been perused carefully.

21. In the present case, at the very outset it is pertinent to mention here that the Hon'ble Supreme Court of India in the case of 'Brig. Sukhjeet Singh' (*supra*) has observed that power to take additional evidence under Section 391 of CrPC is with an object to appropriately decide the appeal by the Appellate Court, and also to secure the ends of justice.

22. In the case of 'Rajeswar Prasad Misra V/s State of West Bengal & Anr.' AIR 1965 Supreme Court 1887, the Hon'ble Supreme Court of India observed that limits of Courts' jurisdiction must obviously be dictated by the exigency of situation and fair play and good sense appears to be the only safe guides. In the abovementioned case, it has also been observed by the Hon'ble Supreme Court of India that power vested by virtue of Section 391 of CrPC must be exercised sparingly and only in suitable cases.

23. Similarly, in the case of 'Rambhau' (*supra*), wherein the application under Section 391 of CrPC was moved by the prosecution, the Hon'ble Supreme Court of India observed that power to permit additional evidence cannot, and ought not to, be exercised in such a way so as to cause prejudice to the accused.



24. With regard to present case, the most important and crucial aspect to be taken into consideration is that, that the instant case is not a case wherein at trial stage opportunity to lead defence evidence was not afforded to the respondents. Since proper opportunity was afforded to the respondents to lead defence evidence, by the learned trial Court, unless some cogent reason would have been shown for the failure to produce the requisite evidence at trial stage, in a routine manner the permission to lead evidence at appellate stage should not be afforded. The above-mentioned observations drives strength from the observation recorded by the Hon'ble Supreme Court of India in the case of 'Ajitsinh Chehuji Rathod' (*supra*).

25. In the present case, another crucial aspect to be taken into consideration is that, that right from the very beginning it had been the stand of the petitioner that performa invoice (Ex.C-10) was delivered to the respondents through 'Mahavir Courier Service Pvt. Ltd.', and therefore, right from the very beginning, the respondents were very-well aware of the abovementioned stand of the petitioner. Thus the opportunity to impeach the credibility of abovementioned claim of the petitioner, should have been availed at the time of cross-examination of witnesses of the complainant. In addition to above, to impeach the credibility of abovementioned evidence, the defence evidence could also have been adduced by the respondents at appropriate stage. However, despite opportunity the respondents, failed to adduce any evidence at the abovementioned two stages.

26. Another aspect to be taken into consideration in the present case is that during the course of trial, an application under Section 311 CrPC was



moved by the respondents, and even at that stage, the respondents never bothered to produce the evidence, which is being sought to be produced at the appellate stage. Thus, the abovementioned two factors work against the claim of the respondents, to the effect that there was due diligence on their part to produce the abovementioned evidence.

27. The next and most crucial aspect to be taken into consideration, with regard to prayer of the respondents for additional evidence is that, that by virtue of application under Section 391 of CrPC, the evidence being sought to be produced by the respondents is the evidence, which has been created/generated subsequent to the judgment of conviction of learned trial Court. Thus, on the face of it, it is apparent that the abovementioned evidence being an evidence procured subsequent to the judgment of conviction, has no relevance or credibility at all.

28. Be that as it may, the most crucial aspect to be taken into consideration is that the evidence being sought to be produced by way of additional evidence is the Enquiry Report, which has been prepared by the Economic Offences Wing Faridabad Police after the verdict of learned trial Court. Since the learned trial Court has believed the document (Ex.C-10), any enquiry by the police with regard to credibility of a document is nothing, but an abuse of process of law. Rather it speaks in volumes against the conduct of the respondents and the police officer who ordered the enquiry with regard to a fact which was already sub-judice. It appears that to circumvent the finding of learned trial Court, who believed the document (Ex.C-10), a report has been generated by the Police Department, by



showing an enquiry on a complaint filed subsequence to the judgment of the learned trial Court. Thus, apparently, the abovementioned act amounted to an effort, to undermine the findings recorded by the learned trial Court with regard to credibility of document (Ex.C-10).

29. The abovementioned enquiry conducted by the Faridabad Police was beyond its jurisdiction as any police authority has got no right to override the findings of the Court, and thus, giving permission to a party to prove such document on record would amount to promoting practice contrary to the settled principles of law.

30. Lastly, the most crucial aspect to be taken into consideration in the present case is that the abovementioned entire exercise is being undertaken by the respondents to prove that there was no exiting liability of the respondents towards the petitioner. However the abovementioned plea of the respondents stands falsified in view of the fact that the performa invoice was only a document to prove business transactions between the parties. The abovementioned document was not a fact in issue in the instant case, as there was admission on the part of the respondents that they had business dealings with the petitioner. It was also an admitted fact that with regard to transactions between the two, even payments were made in the past by the respondents.

31. Once there was an admission on the part of the respondents with regard to business dealings with the petitioner, the documents/evidence being sought to be produced by the respondents, was not going to make any impact on the outcome of the case, as the same at the most can show that the



performa invoice was not delivered to the respondents. Since, the parties are private Ltd. Companies, the existing liability can easily be proved through account books and other documents. For that purpose, the performa invoice is not the only source available. Thus on this ground itself, the prayer of the respondents to lead additional evidence at appellate stage is rendered devoid of merit.

32. While dealing with similar situation the Hon'ble Supreme Court of India in the case of 'Ajitsinh Chehuji Rathod' (supra), has observed that 'power to record additional evidence under Section 391 CrPC, 1973 should only be exercised when party making such request was prevented from presenting evidence in trial despite due diligence being exercised or that facts giving rise to such prayer came to light at a later stage during pendency of appeal and that non-recording of such evidence may lead to failure of justice. In the abovementioned case, the Hon'ble Supreme Court of India has further observed that 'once despite having opportunity, accused appellant did not put any question to bank official examined in defence for establishing his plea of purported mismatch of signature on cheque in question, hence, appellate Court not required to come to aid and assistance of appellant for collecting defence evidence at his behest'.

33. If the factual matrix of instant case is analyzed in the light of abovementioned principles, it transpires that in the present case the application of respondents fails to qualify the abovementioned test and thus, it is hereby held that the learned Appellate Court committed an error of judgment, when without proper appreciation of facts as well as law, it



allowed the application under Section 391 of CrPC, and permitted the respondents to lead additional evidence. As a sequel to abovementioned observations, it is hereby held that there is need for indulgence and interference in the impugned order. Therefore, in the exercise of revisional jurisdiction of this Court, the present petition is hereby *allowed* and the impugned order is hereby set aside.

34. Pending Miscellaneous application(s), if any, shall also stand disposed of, accordingly.

(SURYA PARTAP SINGH)
JUDGE

25.02.2026
Gaurav Thakur

Whether speaking / reasoned	Yes/No
Whether Reportable	Yes/No