



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

176

**CRM-M-12912 of 2026
Date of Decision: 10.03.2026**

MAJOR SINGH @ MAJOR SINGH KHAROUD

....Petitioner

Versus

STATE OF PUNJAB

....Respondent

CORAM: HON'BLE MS. JUSTICE RUPINDERJIT CHAHAL

Present: Mr. Kinshu Mittal, Advocate
for the petitioner.

RUPINDERJIT CHAHAL, J (ORAL)

1. The present petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking quashing of the impugned order dated 16.02.2026 Annexure (P-7), whereby the application under Section 391 of the Code of Criminal Procedure moved by the petitioner for recalling PW-7 and PW-8 for the purpose of further cross-examination has been dismissed by the learned Additional Sessions Judge, Patiala, in Criminal Appeal No. CRA-395 of 2019 titled Major Singh v. State of Punjab.

2. Shorn of unnecessary details, the brief facts of the instant case are that on the complaint of the Patwari, an FIR was registered against the petitioner alleging that he got registered



Vasika No. 1665 dated 09.05.2008 in his favour from one Amarjeet Singh for mortgage of 3 bigha land, but later he allegedly tampered with the said mortgage deed and converted the same into a sale deed and produced a photocopy of the same before the revenue department for getting mutation sanctioned on 07.06.2008. Further, the petitioner allegedly obtained a loan from State Bank of Patiala and did not repay the same, and on enquiry by the bank official, the fraud was discovered and FIR dated 27.03.2013 was registered. Trial was conducted and the prosecution examined 12 witnesses. Upon conclusion of the trial, the learned trial Court convicted the petitioner under Sections 420, 465, 467, 468, 469, 471, 474 and 201 of the IPC vide order dated 31.05.2019.

3. After passing of the judgment and order of sentence, the petitioner filed Criminal Appeal No. CRA-395 of 2019 titled *Major Singh v. State of Punjab*, challenging the order of the trial Court on the basis of discrepancies in the prosecution's evidence. In view of the alleged material irregularities and contradictions and the fact that the vital aspects have been left during the cross-examination of PW7 and PW8, the petitioner moved an application under Section 391 of CrPC for recalling PW7 and PW8 for their further cross-examination. The said application was duly opposed by the respondents therein and subsequently, vide the impugned order dated 16.02.2026, the



said application was dismissed by the learned Additional Sessions Judge, Patiala. Hence, the present petition.

4. Learned counsel for the petitioner submits that while passing the impugned order, the learned appellate court has failed to appreciate the fact that even the learned trial court, while passing the judgment, has observed that there is no direct evidence to prove that the accused has forged the mortgage deed and used it for this purpose. He further submits that the learned Appellate Court also fails to appreciate the fact that the cross-examination of PW7 was not conducted properly and many vital aspects have been left uncross-examined by the previous counsel of the appellant. Even in the case of PW8, the loan was sanctioned after taking a genuine report from PW8, but the said witness was not cross-examined by the previous counsel on this aspect. Hence, re-examination of PW7 and PW8 is very much necessary. Therefore, the learned counsel prayed that the impugned order be quashed and the application filed by the petitioner for recalling and re-examination of PW7 and PW8 be allowed.

5. I have heard Learned counsel for the petitioner and perused the paper book with his able assistance.

6. Before considering the submissions made by learned counsel for the Petitioner, it is apposite to refer to Section 391 Cr.P.C., which reads as under:-



"391. Appellate Court may take further evidence or direct it to be taken.

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

7. Hon'ble Apex Court in the case of "**Rajeshwar Parsad Misra v. The State of W.B. and another**", AIR 1965 SC 1887, has laid down the principle that the provisions of Section 391 Cr.P.C. can be exercised only where there is a failure of justice. Moreover, such an exercise would be subject to the conditions namely:

(i) it should be exercised sparingly and only in suitable cases and more particularly where it is justified;



(ii) the exercise should not be done in such a way as to cause prejudice to the accused, which would appear as a disguise for a re-trial to change the nature of the case against him;

(iii) the order may not ordinarily be made if the prosecution or any party had a fair opportunity and has not availed of it unless the requirements of justice dictate otherwise.

8. In the case of **Ashok Tshering Bhutia v. State of Sikkim, 2011 (2) RCR (Criminal) 99**, the Hon'ble Apex Court held as under:-

"15. Additional evidence at appellate stage is permissible, in case of a failure of justice. However, such power must be exercised sparingly and only in exceptional suitable cases where the court is satisfied that directing additional evidence would serve the interests of justice. It would depend upon the and circumstances of an individual case as to whether such permission should be granted having due regard to the concepts of fair play, justice and the well-being of society. Such an application for taking additional evidence must be decided objectively, just to cure the irregularity. The primary object of the provisions of Section 391 Criminal Procedure Code is the prevention of a guilty man's escape through some careless or ignorant action on part of the prosecution before the court or for vindication of an innocent person wrongfully accused, where the court omitted to record the circumstances essential to elucidation of truth. Generally,



*it should be invoked when formal proof for the prosecution is necessary. (Vide **Rajeswar Prasad Misra v. The State of West Bengal & Anr.**, AIR 1965 SC 1887; **Ratilal Bhanji Mithani v. The State of Maharashtra & Ors.**, AIR 1971 SC 1630; **Rambhau & Anr. v. State of Maharashtra**, 2001(2) RCR (Criminal) 721; **Anil Sharma & Ors. v. State of Jharkhand**, 2004(3) RCR (Criminal) 774 : 2004(3) Apex Criminal 337; **Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat & Ors.**, 2004(2) RCR (Criminal) 836 : 2004(3) Apex Criminal 46 : (2004)4 SCC 158; and **Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi)**, 2010(2) RCR (Criminal) 692: 2010(3) R.A.J. 1.*

16. This Court in **State of Gujarat v. Mohanlal Jitamalji Porwal & Anr.**, AIR 1987 SC 1321, dealing with the issue held as under:

...To deny the opportunity to remove the formal defect was to abort a case against an alleged economic offender. Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona-non-grata whose cause may be



treated with disdain. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest....."

17. In *Rambhau (supra)*, a larger Bench of this Court held as under:

"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 subserve the ends of justice. Needless to record that on an analysis of the Criminal Procedure Code, Section 391 is thus akin to Order [41](#), Rule [27](#) of the C.P. Code."

(Emphasis added)

18. In view of the above, the law on the point can be summarised to the effect that additional evidence can be taken at the appellate stage in exceptional circumstances, to remove an irregularity, where the circumstances so warrant in public interest. Generally, such power is exercised to have formal proof of the documents etc. just to meet the ends of justice. However, the provisions of Section 391 Criminal Procedure Code cannot be pressed into service in order to fill up lacunae in the prosecution's case."

9. Upon consideration of the submissions made by learned counsel for the petitioner and the material available on record, this Court is of the view that no interference is warranted with the impugned order dated 16.02.2026 passed by the learned Additional Sessions Judge, Patiala.

10. It is well settled that the power under Section 391 of the Code of Criminal Procedure is an exceptional power and is to be exercised sparingly and only in cases where the Court finds that the additional evidence is necessary for a just decision of the case and where failure to allow such evidence would result



in miscarriage of justice. The said provision cannot be invoked merely to enable a party to fill up lacunae in its case or to remedy the defects arising out of negligence or omission on the part of the counsel during trial.

11. In the present case, the record reveals that PW7 and PW8 were duly examined before the learned trial Court and the petitioner was afforded adequate opportunity to cross-examine the said witnesses. Merely because the petitioner now seeks to contend that certain aspects were not properly put to the witnesses by the previous counsel cannot be a valid ground for recalling the witnesses at the appellate stage. Accepting such a contention would defeat the principle of finality of trial proceedings and would open the floodgates for recalling witnesses on similar grounds in every appeal.

12. Furthermore, the grounds raised by the petitioner pertain to appreciation of evidence already available on record, which can very well be considered by the appellate Court while deciding the appeal on merits. Therefore, the recalling of PW7 and PW8 for further cross-examination does not appear to be necessary for the just adjudication of the appeal.

13. In view of the settled legal position as laid down by the Hon'ble Supreme Court in **Rajeshwar Prasad Misra (supra)** and **Ashok Tshering Bhutia (supra)**, this Court finds that the petitioner has failed to demonstrate any exceptional



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circumstance or failure of justice which would justify exercise of powers under Section 391 Cr.P.C.

14. Consequently, this Court finds no illegality, perversity or jurisdictional error in the impugned order dated 16.02.2026 passed by the learned Additional Sessions Judge, Patiala, warranting interference in exercise of the jurisdiction under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

15. Accordingly, the present petition is dismissed, being devoid of merit.

10.03.2026

Puneet...

(RUPINDERJIT CHAHAL)
JUDGE

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