



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR No.1396 of 2023
Reserved on: 07.04.2026
Pronounced on: 16.04.2026
Uploaded on: 17.04.2026

*Whether only operative part of the judgment is
Pronounced or the full judgment is pronounced: operative part/full judgment*

Sanjay S/o Late Sh. Brij Mohan

...Petitioner

Versus

Sanjay S/o Late Sh. Bansi Lal

...Respondent

CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU

Argued by:- Mr. Virender Soni, Advocate
for the petitioner.

Ms. Monika Tanwar, Legal Aid Counsel and
Mr. Nikhil Vats, Advocate
for the respondent.

MANDEEP PANNU, J.

1. The petitioner–accused has filed the present revision petition against the impugned order dated 14.10.2022 passed by Learned Additional Sessions Judge, Rohtak in CRA No.242-2018 titled as “*Sanjay son of Late Sh. Brij Mohan versus Sanjay son of Late Sh. Bansi Lal*”, whereby Learned Appellate Court, vide the impugned order, dismissed the application filed by the petitioner–accused under Section 391 Cr.P.C. for leading additional evidence.

2. Briefly stated, the facts of the complaint are that the



respondent-complainant filed a complaint under Section 138 of the Negotiable Instruments Act read with Section 420 IPC against the petitioner–accused, alleging that the petitioner, being known to the complainant, had borrowed an amount of Rs.2,90,000/- for business purposes and issued a cheque bearing No.289527 dated 05.07.2013 drawn on Oriental Bank of Commerce, Gurugram, in discharge of his legal liability. However, upon presentation, the said cheque was dishonoured with the remarks “Funds Insufficient”, and despite service of legal notice, the petitioner failed to make the payment, thereby giving rise to the filing of the present complaint. After completion of preliminary proceedings, notice of accusation was served upon the petitioner–accused, to which he appeared, pleaded not guilty and claimed trial. The respondent–complainant was granted as many as 15 effective opportunities to lead evidence; however, he failed to conclude the same. Consequently, learned Trial Court, vide order dated 11.07.2018, closed the evidence of the respondent-complainant. Thereafter, the respondent–complainant moved an application under Section 311 Cr.P.C. for summoning witnesses, which was dismissed by learned Trial Court vide order dated 04.10.2018. Subsequently, the petitioner–accused led his evidence and also closed the same. Thereafter, learned Judicial Magistrate First Class, Rohtak, vide judgment and order dated 20.10.2018, allowed the complaint filed by the respondent-complainant and sentenced the petitioner–accused to pay fine. Feeling aggrieved by the afore-said judgment of conviction and order of sentence, the petitioner–accused preferred a criminal appeal before learned Sessions Judge, Rohtak.



3. During the pendency of the said appeal, in order to substantiate and strengthen his defence, the petitioner–accused moved an application dated 18.03.2021 under Section 391 Cr.P.C. for leading additional evidence. A reply to the said application was duly filed. However, learned Appellate Court, vide the impugned order, dismissed the application filed by the petitioner–accused under Section 391 Cr.P.C. for leading additional evidence.

4. In the application filed under Section 391 Cr.P.C., it was, *inter-alia*, pleaded by the applicant–appellant–accused that during the course of complainant’s evidence, the complainant had failed to examine the concerned bank official to prove the authenticity of the cheque in question. It was further contended that the cheque did not belong to the accused but to some other person, and learned Trial Court committed an error in not properly verifying the original ownership of the cheque. It was also stated that the certified copies of the relevant bank record/documents, which are material for just adjudication of the case, were not brought on record earlier and, therefore, the same are required to be produced by way of additional evidence.

5. Per contra, in the reply filed by the respondent–complainant, the application was strongly opposed on the ground that a similar application under Section 311 Cr.P.C. had already been moved by the complainant during trial, which stood dismissed by learned Trial Court. It was contended that the present application has been filed only to delay the proceedings and to fill up lacunae in the defence case. It was further submitted that the accused had sufficient opportunity during trial to lead his



evidence and no justification has been shown for not producing the said evidence at the appropriate stage.

6. Learned Additional Sessions Judge, Rohtak, while dismissing the application, observed that the applicant–appellant–accused had already been afforded adequate opportunities during trial and even thereafter to lead his defence evidence, which he availed and closed. It was further observed that the present appeal was filed on 19.11.2018, whereas the application under Section 391 Cr.P.C. was moved much later, without any plausible explanation as to why such evidence was not produced before learned Trial Court. The Court also noted that it was not the case of the applicant that the proposed evidence was not within his knowledge during the trial. Consequently, it was held that the application appeared to have been filed either to delay the proceedings or to fill up lacunae in the case, and since the proposed additional evidence was not essential for the just decision of the case, the application under Section 391 Cr.P.C. was dismissed.

7. Feeling aggrieved by the afore-said impugned order dated 14.10.2022 passed by learned Additional Sessions Judge, Rohtak, the present revision petition has been filed by the petitioner–accused.

8. It has been contended on behalf of the petitioner–accused that the impugned order has been passed in a mechanical manner without proper appreciation of facts and law and is based on surmises and conjectures. It is further contended that learned Appellate Court failed to consider that during trial, the complainant had not examined the concerned bank official to prove the authenticity and ownership of the cheque in



question. It is argued that the cheque does not belong to the petitioner but to some other person and the said fact could be substantiated from the certified bank record, which the petitioner sought to bring on record by way of additional evidence. It is further submitted that the said documents came to the knowledge of the petitioner only after his conviction and, therefore, could not be produced earlier despite due diligence. It is also contended that learned Courts below failed to appreciate that such evidence is essential for the just decision of the case and would go to the root of the matter. It is further argued that the dismissal of the application under Section 391 Cr.P.C. has caused serious prejudice to the petitioner, as it has deprived him of an opportunity to prove his defence that the cheque in question does not pertain to him and has been misused by the respondent with *mala-fide* intention.

9. Per contra, learned counsel for the respondent-complainant has opposed the present revision petition and supported the impugned order. It has been contended that the petitioner-accused had ample opportunities during trial as well as at the stage of defence evidence to produce all relevant material but failed to do so. It is further submitted that even an application under Section 311 Cr.P.C. had earlier been moved and dismissed, and the present application under Section 391 Cr.P.C. has been filed only to delay the proceedings and to fill up lacunae in the defence case. It is also argued that the petitioner has not furnished any satisfactory explanation for not producing the alleged evidence earlier and that the proposed evidence was always within his knowledge. It is thus contended that learned Appellate



Court has rightly dismissed the application, holding that the same was not necessary for the just decision of the case and was merely an attempt to prolong the litigation.

10. I have heard learned counsel for the parties and have gone through the record with their able assistance.

11. At the outset, it is to be noticed that the scope of interference in revision against an order passed by learned Appellate Court declining an application under Section 391 Cr.P.C., is very limited. The power under Section 391 Cr.P.C. is to be exercised sparingly and only in cases where the additional evidence is necessary for a just decision of the case and where the party, despite due diligence, could not produce such evidence at the trial.

12. In the present case, the petitioner-accused was afforded sufficient and repeated opportunities during the course of trial to lead his defence evidence. Even the complainant was granted as many as 15 effective opportunities to conclude his evidence. The record further reveals that the petitioner also led his defence evidence and closed the same. At no stage during the trial did the petitioner make any sincere effort to summon the bank official or produce the documents which he now seeks to introduce at the appellate stage.

13. Very strangely, the petitioner has taken the stand that since the complainant did not examine a particular witness, namely the concerned bank official, he should now be permitted to lead additional evidence at the appellate stage. Such a contention is wholly misconceived and untenable. It was always open to the petitioner-accused to summon the said witness in



his defence if he intended to dispute the authenticity or ownership of the cheque. No plausible explanation has been furnished as to why such witness was not examined during the trial despite ample opportunity.

14. Further, the plea sought to be raised by the petitioner that the documents came to his knowledge only after conviction does not inspire confidence. The alleged bank record pertains to the account of the petitioner himself and, therefore, was always within his knowledge and reach. The application under Section 391 Cr.P.C. has been filed after considerable delay and appears to be an attempt to fill up lacunae in the defence case rather than to assist the Court in arriving at the truth.

15. It is also evident that learned Appellate Court has rightly observed that the petitioner has failed to show that the proposed additional evidence is essential for the just decision of the case. Rather, the conduct of the petitioner indicates that the application has been moved only to delay the proceedings and to re-open the entire case at the appellate stage, which is impermissible in law.

16. The afore-said view is fortified by the judgment of the Hon'ble Supreme Court in *Ajitsinh Chehuji Rathod versus State of Gujarat and another, reported as 2024 (1) RCR (Criminal) 804*, wherein it has been held that the power to take additional evidence at the appellate stage under Section 391 Cr.P.C. cannot be exercised to fill up lacunae in the defence and that the appellate court is not required to come to the aid of a party for collecting defence evidence at its behest. It has further been held that where the accused had sufficient opportunity during trial to lead



evidence and failed to do so, such applications are liable to be rejected.

17. In view of the above discussion, this Court finds no illegality, perversity or infirmity in the impugned order dated 14.10.2022 passed by learned Additional Sessions Judge, Rohtak. The present revision petition, being devoid of merit, is hereby dismissed.

18. All pending applications, if any, also stand disposed of.

16.04.2026
neetu

(MANDEEP PANNU)
JUDGE

Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*