



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

**CRM-M- 27193-2024(O&M)
DECIDED ON: 05.02.2025**

SANDEEP SINGH

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Amit Arora, Advocate
 for the petitioner.

 Mr. J.S Guru, AAG, Punjab

 Mr. Karnail Singh, Advocate,
 for the respondent no.2

SANDEEP MOUDGIL, J

1. The jurisdiction of this court under section 482 of the code has been invoked seeking the quashing of the impugned order dated 24.04.2024(Annexure P-1) passed by Additional Session Judge, Taran Taran vide which the application filed by the petitioner to lead additional evidence in criminal appeal arising out of complaint case bearing no. NACT/136/2018 dated 13.04.2018 has been dismissed vide order dated 18.11.2019.

2. Shorn of unnecessary details the fact leading to filing of present petition is that the complainant, had a friendly relationship with the accused. The accused and his wife, Ranjit Kaur, made an agreement to sell land to the complainant, with possession delivered to him from the date of the agreement i.e 17.09.2016 . The complainant developed the land but the accused failed to



execute the sale deed. Subsequently, the accused and complainant reached a compromise, where the accused agreed to pay Rs. 55,00,000 and provided post-dated cheques. One such cheque for Rs. 15,00,000, dated 22.02.2018, was issued by the accused but dishonoured twice due to a stop payment order. Despite legal notices and assurances, the accused failed to make the payment, leading to the present complaint.

3. Learned counsel for the petitioner contends that petitioner vide judgment of conviction dated 18.11.2019 passed by the trial court, stands convicted under Section 138 of the Negotiable Instruments Act. He was sentenced to two years of rigorous imprisonment, fined Rs. 5,000, and in default of payment of the fine, sentenced to two additional months of rigorous imprisonment. During the appeal, the petitioner filed an application under Section 391 CrPC to introduce additional evidence, including an attested copy of an affidavit dated 15.1.2018, a report dated 20.7.2020, and certified copies of statements from Daljit Singh and Bikramjit Singh. The petitioner also sought to examine these individuals and the concerned police clerk as witnesses.

4. He further submits the petitioner had claimed the cheque was stolen and that the agreement to sell dated 17.9.2016 was made in blind faith without receiving any consideration and moreover the document sought to be produced only came into existence after the conviction report dated 20.7.2020, while the petitioner had been convicted on 18.11.2019.

5. Per contra counsel for the respondent argues that the present application is just an attempt made to prolong the proceedings and additionally there is a delay of 2 years in moving the application as appeal was filed on 11.12.2019 and the application was moved on 04.10.2022.



6. Heard arguments of learned counsel for the respective parties.
7. 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

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

8. The above stated law has been discussed by the Apex court in the case of ***Ashok Tshering Bhutia vs State of Sikkim 2011(2) R.C.R. (Criminal) 99***, wherein it has been observed 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 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.”

9. The law on the point can be summarized 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 of either of the parties.

10. Adverting to the merits of present application it is nowhere pleaded that the petitioner did not get the proper opportunity to place on record documents meaning thereby he could have easily produced the same during the course of trial which he did not. In his statement recorded under Section 313 of the Cr.P.C., the petitioner reiterated that the cheque in question had been stolen. Regarding the agreement to sell dated 17.09.2016, the complainant claimed that he had executed the agreement out of blind trust in the accused, but had not received any payment. If this were indeed the case, the accused had the opportunity to present evidence in his defense during the trial, especially by examining witnesses connected to the agreement to sell. However, he made no effort to do so, and his failure to explain this omission remains unexplained. The appeal was filed on 11.12.2019, and the application was submitted almost two years later, on 04.10.2022 which also remains unexplained. The application references unclear documents, including an affidavit dated 15.01.2018, which was not submitted during the trial. Similarly, it mentions a report (No. 644-A, 20.07.2020) without identifying its author or providing the report itself. This



lack of documentation prevents the Court from considering the petitioner additional evidence at this stage.

11. In view of the discussions made hereinabove, this Court is of the view that there is no illegality, perversity or infirmity in the impugned order dated 24.04.2024(Annexure P-1). Hence, the same is upheld and the present petition stands dismissed.

(SANDEEP MOUDGIL)
JUDGE

05.02.2025

Sham

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
Whether reportable	Yes/No