



IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

Cr.MMO No. 73/2023
Decided on: 11.04.2023

Kewal KrishanPetitioner

Versus

State of H.P. & Ors. Respondents

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Coram

Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹

For the petitioner : Mr. Vijay Bir Singh, Advocate.

**For the respondents : Mr. Y.P.S. Dhaulta, Additional
Advocate General, for respondent
No.1.**

**Mr. Mohit Jataik, Advocate, for
respondents No.2 and 3.**

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Jyotsna Rewal Dua, J.

The order impugned in this petition was passed by the learned Appellate Court on 31.12.2022 dismissing the complainant's application moved under Section 391 of the Code of Criminal Procedure (Cr.P.C.) seeking to place and prove on record certain documents by way of additional evidence.

2. The petitioner was the complainant in FIR No.448/1998 dated 24.8.1998, registered under Sections 417, 466, 474 and 120-B of the Indian Penal Code at Police Station Una, District Una, H.P.

¹ Whether reporters of the local papers may be allowed to see the judgment?

Respondents No.2 and 3 were the accused persons in the said FIR. The FIR eventually resulted in registration of Criminal Case RBT No.79-II-14/03 with Registration No. 10793/2013. The date of institution of the said criminal case was 27.01.2003. Respondents No.2 and 3, the Patwari and Kanungo respectively, were put on trial. Learned Trial Court acquitted the accused persons (respondents No.2 and 3) vide its judgment dated 27.08.2015. Respondent No.1-State accepted the verdict. The complainant preferred an appeal against the aforementioned judgment of the learned Trial Court before the learned Appellate Court. The appeal was preferred by him on 20.10.2015. Two years after filing of the appeal, the complainant moved an application under Section 391 Cr.P.C. to place and prove on record the following documents by way of additional evidence:-

a. Copy of Shajra Kishatwar Bandobast Sani Musavi No. 3 for the year 1986-88 in respect of Khasra Nos. 2328 to 2332 situated in Village Badoli, Tehsil Una Distt Una.

b. Copy of Field Book Bandobast Jadid Suni for the year 1986-88 in respect of Khasra Nos. 2328 to 2332 situated in Village Badoli, Tehsil Una Distt Una, issued by Revenue Patwari Circle Batuhi Tehsil and District Una on 16/7/2016.

c. Copy of Field Book Bandobast Jadid Sani for the year 1986-88 in respect of Khasra Nos. 2327 to 2331 situated in Village Badoli, Tehsil Una Distt Una. (Ex PW20/A) issued on 23/10/2002 by Sukhdev Chand Revenue Patwari Circle Batuhi Tehsil and District Una (PW-20) to the Police which is enclosed with the case file No. RBT No. 79-11-14/03 titled State Versus Ravinder Singh.

d. Copy of statement dated 7/8/2014 of Sukhdev Chand Patwari (PW20) recorded by C.J.M. Una attached in case file No. R.B.T. 79-11-14/03 State Versus Ravinder Singh.

e. Copy of Roznamcha Fard Partal Settlement Record in respect of Badar No. 661 to 706 etc. of Village Badoli, Tehsil Una Distt Una.

f. Copy of plaint of pending Appeal No. 43/13 titled Kewal Krishan Versus Gurbachan Singh filed by Kewal Krishan applicant in the Court of Divisional Commissioner Dharamshala against the order of S.O. Kangra dated 10/10/2012 in case No. 225/98/S.O. titled Kewal Krishan Versus Gurbachan Singh.”

Respondents No.2 and 3 opposed the application.

Considering the given facts and attending circumstances of the case, learned Appellate Court vide order dated 31.12.2022 dismissed the application. In the above backdrop, the complainant has instituted present petition invoking Section 482 Cr.P.C.

3. I have heard learned counsel for the petitioner (complainant) as well as learned counsel for respondents No.2 & 3 and learned Additional Advocate General for respondent No.1.

4. For the following reasons, I am not inclined to interfere with the impugned order:-

4(i) Section 391 Cr.P.C gives out power to the Appellate

Court to take further evidence in following manner:-

“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 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.”

4(ii) In (2019) 16 SCC 712 [**Brigadier Sukhjeet Singh (Retired) MVC Vs. State of Uttar Pradesh & Ors**], the Hon'ble Apex Court held that the key words in Section 391(1) are “if it thinks additional evidence to be necessary”. The word “necessary” used in Section 391(1) is to mean necessary for deciding the appeal. Power to take additional evidence under Section 391 Cr.P.C. is with the object of appropriate decision of the appeal by the appellate Court to secure ends of justice. The Hon'ble Apex Court noted the decision rendered in (2001) 4 SCC 759 (**Rambhau Vs. State of Maharashtra**), wherein a word of caution was introduced for guidance “that additional evidence cannot and ought not to be received in such a way so as to cause any prejudice to the accused. It is not a disguise for a re-trial or to change the nature of the case against the accused. The order for adducing additional evidence must not ordinarily be made, if the prosecution has had a fair opportunity and has not availed of it. It was further held that there is no fetter on the power under Section 391 Cr.P.C of the Appellate Court. All powers are conferred on the Court to secure the ends of justice. While

allowing the application moved under Section 391 Cr.P.C. by the accused in that case, Hon'ble Apex Court further held that it depends on facts of each and every case to come to a conclusion as to whether it is necessary to take additional evidence or not.

It would also be apt to refer **2019(3) SLC 1354 (Jagdeep Kumar Vs. Himachal Pradesh State Cooperative Bank Limited)**, wherein observations were made that Section 391 Cr.P.C. is not intended to remedy the negligence or laches of the party.

In the backdrop of above legal position, the facts of the instant case may now be examined.

4(iii) The documents intended to be now produced and proved by the petitioner (complainant) pertain to the years 1986, 1988, 2002, 2003, 2012 and 2016.

4(iv) The FIR was registered at the instance of the petitioner-complainant in the year 1998. The petitioner was associated during investigation. In case, the documents were essential for the disposal of the case as claimed by the petitioner then it was for him to make disclosure of all these documents during investigation. Admittedly, he did not do so at the relevant time.

4(v) The petitioner-complainant was examined in the matter on 18.02.2006. The documents, which he now wants to produce could have been produced by him even at that time. Respondents No.2 and 3 have faced the trial for long 13 years. Learned Trial Court

acquitted them vide judgment dated 27.08.2015 with following observations:-

“48. Thus, it has come out from the entire evidence on record that accused Ravinder Singh and Ved Parkash being Patwari and Kanungo respectively did not commit any forgery in the revenue record. It is clear from inspection Rojnamcha Ex.PW3/H that earlier certificate dated 22.1.1994 was cancelled on 12.9.1996 and then Naib Tehsildar had ordered to prepare new Latha as certain amendments were made in the revenue record of Musavi No.Ga/4 of village Badoli. Then, the accused persons prepared new record as per order of higher authorities and it is due to this reason that the change had appeared in the latest revenue record for the year 1998. Thus, the prosecution has miserably failed to prove on record by leading cogent and convincing evidence that the accused persons committed any forgery and cheated the complainant. Hence, all the points are decided against the prosecution and answered in the negative.”

The petitioner-complainant instituted the appeal on 20.10.2015. Two years later, he moved the application under Section 391 seeking to place and prove on record several documents by way of additional evidence. No reason has been assigned in the application for the delay in making the prayer. The only reason mentioned is that the documents under reference were not in custody of the petitioner. The petitioner has not even denied having prior knowledge about the existence of the documents in question. The powers under Section 391 Cr.P.C. are to be exercised judiciously and not for mere asking. In the instant case, it is the complainant, who is seeking to produce additional evidence at the appellate stage, when

he had every opportunity to place such evidence before the authorities during investigation as well as during trial. The trial has ended after full 13 years in the acquittal of the accused persons (respondents No.2 and 3). By allowing the prayer made in the application great prejudice shall be caused to the accused persons as it would virtually amount to re-trial.

5. For the aforesaid reasons, I do not find any infirmity with the impugned order dated 31.12.2022, passed by the learned Appellate Court, dismissing the petitioner's application under Section 391 Cr.P.C. Hence, the instant petition is dismissed, so also the pending miscellaneous application, if any.

It is made clear that observations made above are only for the purpose of adjudication of instant petition and shall not be construed as an opinion on the merits of the matter. Learned Appellate Court shall decide the appeal without being influenced by the above observations.

Jyotsna Rewal Dua
Judge

11th April 2023
(Rohit)