



IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE PRAMOD KUMAR AGRAWAL

MISC. CRIMINAL CASE No. 39743 of 2024

VINOD RAGHUVANSHI

Versus

AJAY ARORA

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Appearance:

Shri Sanjay K. Agrawal - Senior Advocate with Shri Yashovardhan Jain - Advocate for the applicant.

Shri Anil Khare - Senior Advocate with Shri Aman Gupta - Advocate for the respondent.

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Reserved on : 12.11.2024

Pronounced on : 26.03.2025
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ORDER

The applicant has filed present petition under Section 528 of B.N.S.S. against order dated 09.08.2024 passed in CRA. No.489/2023 by XXI Additional Sessions Judge, District Bhopal (M.P.) by which the application preferred by applicant under Section 391 of Cr.P.C. for taking additional evidence has been rejected.

2. Brief facts of the case are that the applicant being State Government employee had retired from the post of Deputy Commissioner (Excise). In the year 2003, he was posted as District Excise Officer, Bhopal. The liquor shops situated in Bhopal were put to auction and the same was allotted in favour of Ashoka Traders. The auction proceedings were



conducted by a committee headed by then Collector, Bhopal, Shri Anurag Jain, who sent the report to the Excise Commissioner for approval of auction proceedings vide letter dated 11.03.2003 (Annexure A/1). Thereafter, the applicant was transferred from Bhopal on 12.06.2003.

2.1 The respondent/complainant submitted a complaint that partnership deed of Ms. Ashoka Traders was changed by officers and employees of Excise Department. On the basis of said complaint, the state government called a report from the Collector, Bhopal, who sent the report on 04.09.2003 (Annexure A/2). In that report, the Collector has written that partnership deed was submitted on the date of auction proceedings. Thereafter, the complainant filed a writ petition before Coordinate Bench of this Court WP. No.28262/2003, which was disposed of vide order dated 05.01.2004 (Annexure A/3) by directing the State Government to decide the representation filed by complainant. In pursuance of order dated 05.01.2004 passed by Coordinate Bench of this Court, the Commissioner (Excise) directed Shri Bharat Kumar Vyas, Additional Commissioner (Excise) to enquire into the complaint made by complainant. Thereafter, Shri Bharat Kumar Vyas submitted a preliminary report dated 02.12.2005 (Annexure A/4) in which he found that present applicant and other officers have changed the partnership deed. The present applicant has sent an incorrect report through Collector to Chief Secretary. The Commissioner (Excise) found that there is inconsistency in the report submitted by Collector, Bhopal, Shri Anurag Jain and inquiry report submitted by Additional Commissioner (Excise), Shri Bharat Kumar Vyas. Therefore, he directed to



conduct second enquiry by another officer Shri D.R. Johri, who in its enquiry report (Annexure A/5) found that there is no direct evidence against present applicant and other officers, therefore they cannot be held responsible for the same.

2.2 After considering the representation submitted by the complainant, the Principal Secretary, Department of Commercial Taxes held that no irregularity was committed in the auction proceedings. He also disapproved the report submitted by Shri Bharat Kumar Vyas and Shri D.R. Johri and rejected the representation of complainant. Thereafter, respondent/complainant filed another writ petition WP. No.2617/2007 before this Court and the Coordinate Bench of this Court dismissed the said WP by order dated 08.04.2008 (Annexure A/7) by holding that report submitted Shri Bharat Kumar Vyas has been considered and rejected by the State Government. Thus, it is clear that the inquiry report submitted by Shri Bharat Kumar Vyas was considered and disapproved by the State Government. In this regard, a public interest litigation WP (PIL) No.20614/2013 was also filed before this Court, which was also dismissed by order dated 14.08.2014 (Annexure A/8).

2.3 Thereafter, the complainant filed a complaint under Section 200 of Cr.P.C. before C.J.M.. (Annexure A/9), Bhopal alleging for commission of offences under Section 420, 467, 468, 471/120-B of IPC. The Trial Court registered the case against the applicant and co-accused during the trial, the applicant filed an application under Section 243/247 of Cr.P.C. before the Trial Court for summoning Shri Anurag Jain, then Collector, Bhopal as



defence witness, which was dismissed by Trial Court vide order dated 26.12.2022 (Annexure A/10). Being aggrieved the said order, the applicant preferred a revision before Revisional Court, which was also dismissed vide order dated 08.05.2023 passed in CRR. No.13/2023 by XII Additional Sessions Judge, District Bhopal (M.P.) (Annexure A/11). Learned Trial Court convicted the applicant under Section 420 and 120-B of IPC vide judgment dated 29.08.2023 (Annexure A/12). Against said judgment, the applicant filed a criminal appeal before Appellate Court which was registered as CRA. No.489/2023. During the pendency of said criminal appeal, the applicant filed an application under Section 391 of Cr.P.C. (Annexure A/13) for calling Shri Anurag Jain as defence witness, which was dismissed vide impugned order dated 09.08.2024 (Annexure A/14). Hence, the applicant has filed present petition before this Court.

3. Learned senior counsel for the applicant has contended that the applicant has been convicted by the Trial Court solely on the basis of report submitted by Shri Bharat Kumar Vyas, Additional Excise Commissioner in which Shri Vyas has mentioned that the applicant has managed to send an incorrect report through Collector, Bhopal on 04.09.2003. Shri Anurag Jain, then Collector, Bhopal can explain as to whether the report was sent by him on seeing official records or the same was sent only at the instance of present applicant. Though report sent by Collector Shri Anurag Jain has already been exhibited in the evidence, but oral testimony of Shri Anurag Jain is required to controvert the finding given by Shri Bharat Kumar Vyas, Additional Excise Commissioner. Non examination of Shri Anurag Jain will severely



prejudice the defence of applicant.

3.1 It is further contended by learned senior counsel that the sole consideration of application under Section 391 of Cr.P.C. at appellate stage should be to meet the ends of justice and mere filing of application at belated stage is not a sufficient ground to reject the application. In this regard, the decision of the Hon'ble Apex Court in the case of *Brigadier Sukhjeet Singh (Retired) MVC Vs. State of Uttar Pradesh and others 2019 (16) SCC 712* is relied upon by learned senior counsel.

4. Learned senior counsel for the respondent has submitted that the applicant and co-accused have been convicted by the Trial Court vide judgment 29.08.2023 for the offence under Sections 420 & 120-B of IPC and sentenced to undergo R.I. for three years. Against the said judgment, two appeal have been filed; one by the applicant for setting aside order of conviction and sentence and the other by the respondent seeking enhancement of sentence and both the appeals are pending before the Appellate Court. It is also contended that nine contractors in connivance with present applicant and other officers of the Excise Department have changed the partnership deed during the tender period. For the said act, a criminal case was registered against nine contractors on the basis of complaint submitted by respondent and they were convicted and sentenced to undergo R.I. for three years with fine of Rs.10,000/- vide judgment dated 29.04.2019. Against said judgment, they have preferred a Criminal Appeal No.275/2019 before the Court of 21st Additional Sessions Judge, Bhopal.

4.1 It is also contended that respondent had filed a complaint against



present applicant for changing partnership in the record, which was registered as RCT. No.5442/2008 for the offence under Section 420 & 120-B of IPC. The order taking cognizance of complaint was challenged by applicant before Sessions Judge by preferring Criminal Revision No.195/2008, which was also dismissed. Being aggrieved the said order, the applicant filed a petition before this Court registered as MCRC. No.5521/2008, which was dismissed by order dated 11.11.2008. The applicant challenged the said order by filing Criminal Appeal No.1477/2013 before Hon'ble Apex Court, which was also dismissed vide order dated 23.09.2013. It is also submitted that while dismissing the criminal appeal, Hon'ble Apex Court has categorically given a finding that partnership deed dated 06.03.2003 was forged document and had been deposited in the office of applicant on the same day. It is further submitted that thereafter the applicant raised the issue of sanction in the Trial Court under Section 197 of Cr.P.C., which was rejected by the Trial Court, Sessions Court as well as Coordinate Bench of this Court in MCRC. No.12365/2015 vide order dated 17.09.2018. It is also contended that thereafter applicant challenged the order of framing of charge by the Trial Court, which was also dismissed by Sessions Court vide order dated 18.07.2019 passed in Criminal Revision No.374/2019. Against this order, he filed a petition before this Court under Section 482 of Cr.P.C. in which the applicant had filed an application before this Court for making forged signatures of the respondent thereby seeking a transfer of the said petition from the concerned Judge. In this regard, a detailed enquiry was conducted pursuant to directions of this Court by



Principal Registrar (Judicial) in which it is found that the letter dated 20.09.2019 was not written by the respondent. The applicant was convicted by the Trial Court vide judgment dated 29.08.2023. It is further contended that conduct of applicant has not been proper and somehow he managed to drag the case for about 15 years by filing multiple litigations before various forums.

4.2 It is also contended by learned senior counsel that the application for examination of said witness was filed by the applicant during trial, which was rejected by order dated 26.12.2022. The applicant has challenged that order before the Sessions Court, which was also dismissed by the Sessions Judge by order dated 08.05.2023 in Criminal Revision No.13/2023 and thus, the order of Trial Court has been affirmed by Revisional Court. It is further contended that the applicant had not chosen to challenge the order dated 08.05.2023 passed by Revisional Court, therefore the said order had attained finality. Both the orders were dismissed on the ground that there is no need for getting Shri Anurag Jain to be examined because the documents, which the applicant desires to be produced have already been exhibited. It is also contended that thereafter the applicant again filed a fresh application under Section 391 of Cr.P.C. on the same set of facts to call for same witness i.e. Shri Anurag Jain as defence witness, which has been dismissed by the Appellate Court. It is submitted that the issue involved in this case has already been decided by the Trial Court and the Sessions Court, which had attained finality, therefore the Appellate Court has rightly dismissed the petition. Learned senior counsel supported the order passed by Appellate



Court. In support of his contention, learned senior counsel has placed reliance on the decision of Coordinate Bench of this Court in the case of *Vikas Modi & Anr. vs. State of M.P. & Anr.* passed in MCRC. No.28967/2023.

5. Heard learned counsel for the parties and perused the record.

6. Section 391 of Cr.P.C empowers the appellate Court to see that justice is done between both the parties and if the appellate Court finds that certain evidence is necessary in order to enable it, give correct findings. It would be justifiable in taking action in this section.

7. The law is well settled by a catena of judgments rendered by Hon'ble Apex Court that power to record additional evidence under Section 391 of Cr.P.C. should only be exercised when the party making such request was prevented from presenting the evidence in the trial despite due diligence being or that the facts giving rise to such prayer came to light at a later stage during pendency of the appeal and that non-recording of such evidence may lead to failure of justice.

8. In a recent decision in the case of *Ajitsinh Chehuji Rathod vs. State of Gujarat & Anr.* reported in (2024) 4 SCC 453, Hon'ble Apex Court has held that power to record additional evidence under Section 391 of Cr.P.C. can be exercised when the party making such request was prevented from presenting the evidence in the trial despite due diligence and that non-recording of such evidence may lead to failure of justice.

9. During the trial, the applicant has filed an application under Section 243 and 247 of Cr.P.C. to be examined Shri Anurag Jain and other witnesses



as a defence witness on the same set of facts and that application was dismissed by the Trial Court by order dated 26.12.2022 (Annexure A/10). Against the said order, the applicant has filed Criminal Revision No.13/2023, which was dismissed on 08.05.2023 (Annexure A/11) by 12th Additional Sessions Judge, Bhopal. The applicant has not challenged the order of Revisional Court, therefore the said order has attained finality. It is evident that the applicant was having opportunity to challenge the order of Revisional Court before higher forum, which does not seem to have availed. It is not a case where new document has come on record, which was not within the powers, possession or knowledge of the applicant. The applicant was fully aware of the fact that his application was dismissed by the Trial Court as well as Revisional Court. However, that opportunity was not availed by the applicant.

10. So far as the reliance on the judgment of the Hon'ble Apex Court in the case of *Brigadier Sukhjeet Singh* (supra) is concerned, the said case turns on different factual back ground. In the said case a trust deed was on record but the trial court had refused to relied on the trust deed only because its photocopy was on record and its original was not on record. During the appellate stage the accused persons had brought on record the certified copy of the trust deed and that was not allowed to be taken on record. In these circumstances, the Hon'ble Apex Court has held that the certified copy of trust deed can be taken on record by appellate Court by exercising jurisdiction of u/s 391 Cr.P.C. to meet ends of justice. On the other hand, in the present case, the facts as narrated above indicate that the applicant has



earlier filed the application on the same facts before the Trial Court, which was dismissed by the Trial Court and the learned Revisional Court, which attained finality.

11. Hon'ble Apex Court in the case of *Zahira Habibullah Sheikh & Anr vs State Of Gujarat & Ors 2004(4) SCC 158* has held that Section 391 of the Code is another salutary provision which clothes the courts with the power to effectively decide an appeal. Though Section 386 envisages the normal and ordinary manner and method of disposal of an appeal, yet it does not and cannot be said to exhaustively enumerate the modes by which alone the court can deal with an appeal. Section 391 is one such exception to the ordinary rule. For this purpose it is open to the appellate court to call for further evidence before the appeal is disposed of. The appellate court can direct the taking up of further evidence in support of the prosecution; a fortiori it is open to the court to direct that the accused persons may also be given a chance of adducing further evidence. The primary object of Section 391 is the prevention of a guilty man's escape through some careless or ignorant proceedings before a court or vindication of an innocent person wrongfully accused. Where the court through some carelessness or ignorance has omitted to record the circumstances essential to elucidation of truth, the exercise of powers under Section 391 is desirable. In the present case, the nonavailing of the opportunity during course of trial u/s 243 and 247 Cr.P.C. does not appear out of ignorance or carelessness of the petitioners as they have been shown to be dilligently prosecuting their defence in the trial.

13. Hon'ble Apex Court in the case of *Ajitsinh Chehuji Rathod* (supra)



has held as under:-

“17. Thus, we are of the view that if at all, the appellant was desirous of proving that the signatures as appearing on the cheque issued from his account were not genuine, then he could have procured a certified copy of his specimen signatures from the Bank and a request could have been made to summon the concerned Bank official in defence for giving evidence regarding the genuineness or otherwise of the signature on the cheque.

18. However, despite having opportunity, the accused appellant did not put any question to the bank official examined in defence for establishing his plea of purported mismatch of signature on the cheque in question and hence, we are of the firm opinion that the appellate Court was not required to come to the aid and assistance of the appellant for collecting defence evidence at his behest. The presumptions under the NI Act albeit rebuttable operate in favour of the complainant. Hence, it is for the accused to rebut such presumptions by leading appropriate defence evidence and the Court cannot be expected to assist the accused to collect evidence on his behalf.”

14. Thus, in this matter, it cannot be said that the applicant had no knowledge regarding this evidence and documents, hence, this cannot be said to be a bonafide case in terms of Section 391 of Cr.P.C.

15. As a consequence of the aforesaid, I find no infirmity in the impugned order warranting interference, present MCRC lacks merits and stands dismissed.

(PRAMOD KUMAR AGRAWAL)
JUDGE