

I.A. No.4 of 2020
In
Crl. Appeal No. 40 of 2018
Trilochan Kapoor Sharma vs. State of Sikkim

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Appellate Jurisdiction)

S.B: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

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IN
Crl. Appeal No.40 of 2018

Trilochan Kapoor Sharma,
S/o Late Hari Singh Sharma,
R/o Rhenock Bazar,
East Sikkim. Appellant

Versus

State of SikkimRespondent

**Application under Section 391 read with Section 482 of
the Code of Criminal Procedure, 1973.**

Appearance:

Mr. B. Sharma, Senior Advocate with Mr.
Rajendra Upreti, Advocate for the Appellant.

Mr. Sudesh Joshi, Public Prosecutor and
Mr. Yadev Sharma, Additional Public Prosecutor
for the State Respondent.

O R D E R (ORAL)

Dated: 02.09.2021

Bhaskar Raj Pradhan, J.

1. The appellant has moved an application under section 391 read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for placing further documents as evidence on record. It is pleaded that the appellant had taken a stand that he is suffering from mental illness at the

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time of alleged commission and even during the trial. It is further averred that the appeal was filed in consultation with his wife as the learned counsel who prepared the memo of appeal was not satisfied with the appellant's behavior. When the counsel for the appellant was preparing the case for final argument, his wife also informed the counsel that the day when exhibit-17 was allegedly prepared, the appellant was mentally unfit, and she had taken him to a doctor. The counsel for the appellant advised the appellant's wife to find out the relevant document. On doing so, she discovered the medical certificate dated 23.05.2012 and discharge certificate dated 26.05.2012 annexed and marked as Annexure-A collectively to the application. It is stated that the documents are relevant and goes to the root of the case. Consequently, the application for leading additional evidence.

2. A reply has been filed by the State-respondent contesting the application and stating that the appellant has failed to establish how these documents are necessary.

3. Mr. B. Sharma learned Senior Advocate for the appellant submits that a perusal of the impugned judgment reflects that the learned Trial Court has heavily relied upon

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exhibit-17 against the appellant. He also took this court through the various records of the case. He, therefore, submits that these two documents are necessary, and the application may be allowed. Mr. Sudesh Joshi learned Public Prosecutor for the State-respondent submits otherwise. It is submitted that although the appellant's wife was examined as a defense witness, during the trial she did not depose that on the day of execution of exhibit-17 the appellant was in fact admitted to the hospital. It is his submission that the scope of Section 391 Cr.P.C. is limited to permitting additional evidence when the court finds it necessary and not to fill the lacunae in the case. In support, the judgment of the Supreme Court in **Rajvinder Singh vs. State of Haryana**¹ is referred to.

4. Section 391 Cr.P.C. 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*

¹ (2016) 14 SCC 671

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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.”*

5. The Supreme Court in ***State (NCT of Delhi) vs. Pankaj Chaudhary***² held that the power conferred under Section 391 Cr.P.C. is to be exercised with great care and caution. In dealing with any appeal, the appellate court can refer to the additional evidence only if the same has been recorded as provided under Section 391 Cr.P.C.. Any material produced before the appellate court to fill up the gaps by either side cannot be considered by the appellate court.

6. This court has considered the application and the relevant records highlighted by Mr. B. Sharma as well as Mr. Sudesh Joshi. The conviction of the appellant under Section 468, 420, 471, 419, 201 of the Indian Penal Code, 1860 (IPC) and Section 13(1) (d) (i) of the Prevention of Corruption Act, 1988 relates to offence committed in the year 2012 but prior to the execution of exhibit-17. Exhibit-17 is a letter dated 23.05.2012 under the signature of the appellant as a Deputy Director where he admits to various acts of omission and commission as reflected therein. This

² (2019) 11 SCC 575

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document was exhibited by one Thupden Gelep Bhutia (P.W.11). His cross-examination reflects that the stand of the appellant was that exhibit-17 was signed under duress and not what is sought to be made out in the application under Section 391 Cr.P.C. that on the date of preparation of exhibit-17 he was admitted to the STNM Hospital.

7. As rightly pointed out by the learned Public Prosecutor the appellant had not even taken this stand during his examination under Section 313 Cr.P.C.

8. Mr B. Sharma pointed out the various orders passed by the learned Trial Court which reflects that before the trial an application has been filed on behalf of the appellant with various medical records pertaining to the treatment undergone by him for mental illness. In exercise of the powers under Section 329 Cr.P.C. the learned Trial Court thought it fit to ascertain the appellant's mental status before proceeding with the case. On 31.03.2016 Dr. C. S. Sharma was examined as court witness. On his examination the learned Trial Court held that it was satisfied that the appellant was able to understand the nature of the proceedings and could defend his case properly. The said order also records that the learned Public Prosecutor and the learned Senior Counsel for the

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appellant conceded that the trial of the case can begin because of the then mental status of the appellant. This order was not assailed. Thus, evidently the trial of the case was conducted in the presence of the appellant who was in good mental condition.

9. Dr. C.S. Sharma (D.W.1) was examined as a defence witness. He deposed that the appellant was under treatment since 2010 and in the year 2011 he referred the appellant to National Institute of Mental Health and Neurosciences (NIMHANS) Bangalore. He asserted that as per the discharge summary issued by NIMHANS the appellant was admitted for :-

“1. episodes of excessive subjective feelings of energy, over talkativeness, over grooming, over spending, tall claims, decreased sleep and decreased appetite suggestive of mania lasting for more than a week alternative with episodes of sadness, loss of interest in all the activities, depressed sleep and appetite suggestive of depression.

2. Second person auditory hallucination commanding since last eight years which would increase during episodes but are continually present even in the inter-episodic period.

3. Worsening of symptoms since 2008 with delusion of reference, prosecution, second person auditory hallucination, de-realization with extreme fluctuation in mood.

The patient was diagnosed as schizoaffective disorder and was started on treatment.

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10. The fact that the appellant was treated in the year 2011 at NIMHANS Hospital, Bangalore and previously by Dr. C.L Pradhan and Dr. C.S. Sharma was also reiterated by Ms. Durga Sharma (D.W.2) wife of the appellant. The first document sought to be relied upon by the appellant is a document of STNM Hospital dated 23.05.2012 with an endorsement that the appellant was directed to be admitted in the psychiatric ward. The other document is a document of the District Mental Health Programme, Department of Psychiatry Health Care, Human Services & Family Welfare Department, Sikkim dated 26.05.2012 which records the complaints of the appellant on that day, the information given purportedly by his brother that the duration of his illness was 3/4 years, as well as the treatment plan by Dr. C.L. Pradhan given on 26.05.2012.

11. The Appeal was filed on 26.11.2018. It is supported by an affidavit of the appellant contrary to the stand taken by the appellant in the application under consideration. The evidence of his mental condition is already on record. The explanation sought to be given by the appellant to produce Annexure-A collectively at this stage after 5 years of framing of charges while the appeal is ready for final

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argument is wanting and seems to be an attempt to raise a fresh plea not taken during the trial.

12. As held by the Supreme Court in ***Rajvinder Singh (supra)*** it was certainly possible for the appellant who was in good mental condition to understand the nature of the proceedings during the trial to produce the said documents during the trial especially when the appellant had also led defense witnesses.

13. In the circumstances, this court is of the considered view that the application under Section 391 Cr.P.C. is devoid of merit and is accordingly rejected.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting : **Yes**
Internet : **Yes**

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