

I.A. No.14 of 2018
 IN
 Crl. Revision Petition No.08 of 2015
 Radhey Shyam Swami v. Jagat Singh Singhi

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

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

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IN
Crl. Rev. P. No. 08 of 2015

Shri Radhey Shyam Swami,
 S/o Late Likhma Ram Swami,
 C/o Apsara Saree Centre, Sitla Bazar,
 Sadalpur, Churu, Rajasthan. Revisionist

versus

Shri Jagat Singh,
 S/o Late Manmull Singhi,
 R/o Tibet Road,
 Gangtok,
 East Sikkim. Respondent

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

Appearance:

Mr. Zangpo Sherpa, Mr. Sangay G. Bhutia and Mr. Jushan Lepcha, Advocates for the Revisionist.

Mr. Jorgay Namka, Ms. Panila Theengh, Ms. Tashi Doma Sherpa, Advocates for the Respondent.

O R D E R O R A L L Y
(06.08.2018)

Bhaskar Raj Pradhan, J

1. Heard Mr. Zangpo Sherpa, Learned Counsel for the Revisionist.

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2. The Applicant/Revisionist prefers the present application under Section 391 of the Code of Criminal Procedure, 1973 (Cr.P.C.) for placing additional document on record. The records reveal that this matter has gone through a trial from 01.12.2006 till 24.06.2008 when the Learned Trial Judge rendered its judgment. The record further reveals that dissatisfied with the order of the Learned Trial Judge the Revisionist preferred a Criminal Appeal No.07/2008 filed on 22.07.2008. The judgment in Appeal was pronounced by the Appellate Court on 27.06.2015 against the Revisionist. The application under Section 391 (Cr.P.C.) filed before this Court on 12.05.2018 seeks the following prayers:

- “a. allow the present application and permit the applicant, Radhey Shyam Swami to lead further evidence or in alternate remand the matter back to Lower Court/s for the limited purpose to lead further evidence by allowing the applicant to produce and rely on the above mentioned documents which are as follows:*
- i. The three (3) Complaint filed by the respondent, bearing Private Complaint Case. No. 52 of 2013, Private Complaint Case No.53 of 2013 and Private Complaint Case No.39 of 2014.*
 - ii. Declaration dated 13.09.2005 (Denied by the Revisionist).*
 - iii. Memorandum of Understanding dated 19.09.2005 (Denied by the Revisionist).*
 - iv. Sub Divisional Magistrate’s Order dated 12.08.2002.*
 - v. Forensic Report.*

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- b. *Pass such further and other order/s as this Hon'ble Court may deem fit and proper in the facts and proper in the facts and circumstances of the case."*

3. Section 391 Cr.P.C. permits the Appellate Court to either take 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 if the Court thinks "*additional evidence to be necessary.*" Mr. Zangpo Sherpa, Learned Counsel for the Revisionist/Applicant relies upon the judgment of the Supreme Court in re: **Ashok Tshering Bhutia vs. State of Sikkim**¹ and draws the attention of this Court to paragraph 28 and 29 thereof which is quoted herein below:

"28. Additional evidence at the 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 facts and 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.

29. The primary object of the provisions of Section 391 CrPC 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. Generally, it should be invoked when formal proof for the prosecution is necessary. [Vide Rajeswar Prasad Misra v. State of W.B. [AIR 1965 SC 1887 : (1965) 2 Cri LJ 817] , Ratilal Bhanji Mithani v. State of Maharashtra [(1971) 1 SCC 523 : 1971 SCC (Cri) 231 : AIR 1971 SC 1630] , Rambhau v. State of Maharashtra [(2001) 4 SCC 759 : 2001 SCC (Cri) 812 : AIR 2001 SC 2120] , Anil Sharma v. State of Jharkhand [(2004) 5 SCC 679 : 2004 SCC (Cri) 1706 : AIR 2004 SC 2294] , Zahira Habibulla H. Sheikh v. State of Gujarat [(2004) 4 SCC 158 : 2004 SCC (Cri) 999] and Manu Sharma v. State (NCT of Delhi) [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385 : AIR 2010 SC 2352] .]"

¹ (2011) 4 SCC 402

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4. The judgment of the Supreme Court with regard to additional evidence is clear. Additional evidence at the Appellate Stage is permissible in case of a *“failure of justice”*. It is also clear that such power must be exercised *“sparingly”* and only in *“exceptional suitable cases where the court is satisfied that directing additional evidence would serve the interest of justice.”*

5. This Court has examined the application preferred by the Revisionist under Section 391 Cr.P.C. The Revisionist has failed to even plead the necessary ingredients of Section 391 Cr.P.C. There is no averment in the application that each of these documents sought to be relied upon by the Revisionist is necessary in the present case. There is no pleading that not accepting the additional evidence at the stage of the present revision would lead to failure of justice. The application also does not disclose why it is necessary to take those additional evidence at this stage for the purpose of this Revision Petition. It has been submitted by Mr. Zangpo Sherpa that the Declaration dated 13.09.2005 and the Memorandum of Understanding dated 19.09.2005 were documents sought to be relied upon by one Amrit Singh Singhi in a different criminal complaint case. In the applicant itself it is mentioned that these documents have been denied by the Revisionist. On being asked Mr. Zangpo Sherpa fairly submits that in the said proceeding the Revisionist who was also an accused in that case denied his signature thereon, sought for expert opinion, obtained it and proved before that

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Court that the declaration purported to have been signed by the Revisionist was not under his signature and that the Memorandum of Understanding between the parties thereto-one of them being the Revisionist was also not under the signature of the Revisionist. There is no explanation forthcoming in the application as to how two documents admittedly proved to have been forged by the Revisionist in another proceeding is found relevant by the Revisionist in the present proceedings. More curiously the two documents dated 13.09.2005 and 19.09.2005 respectively. There is no explanation in the present application or in the oral submission made by Mr. Zangpo Sherpa as to why these documents which were available in the records of another criminal complaint were not relied upon during the trial or at the Appellate stage. The forensic report sought to be relied upon pertains to Private Complaint Case Nos. 52/2013, 53/2013 and 39/2014. A thorough scan of the application filed by the Revisionist under Section 391 Cr.P.C. does not disclose why the forensic report of private complaint cases mentioned above is relevant in the present case. No attempt has been made to either plead or clarify as to why the Revisionist at this stage seeks to rely upon the three complaints pertaining to Private Complaint Case No.52/2013, 53/2013 and 39/2014.

6. Having examined the application, the photo copies of documents sought to be produced as additional evidence and hearing the learned Counsel for the Revisionist sufficiently this

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Court is of the view that the Revisionist has failed to satisfy that the power under Section 391 Cr.P.C. should be exercised in the interest of justice in the facts and circumstances of the present case, accordingly, the application is dismissed.

Judge
06.08.2018

to **Index: ~~yes~~/No**
 Internet: yes/~~No~~