ABC 2019 (I) 156 SC
ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Ashok Bhushan & K.M. Joseph, JJ.)
Criminal Appeal No. 148 of 2019
(Arising Out of SLP (Crl.) No.1120/2017)
(From Allahabad High Court)
Decided On 25 January, 2019

BRIG. SUKHJEET SINGH (RETD.) MVC - Appellant(s).

Versus

STATE OF UTTAR PRADESH & ORS. - Respondent(s).

Law Covered:- *(A) Code of Criminal Procedure, 1973 — Section 391 —Additional evidence in Appeal — Refusal — Indian Penal Code, 1860 — Section 420/34 — Conviction under — Observation of the High Court — (i) Filing of additional evidence at belated stage — (ii) Ulterior malafide motive —(iii) application filed for delaying the decision of the appeal — Observations not tenable — Held, the Appellate Court has failed to exercise its jurisdiction u/s 391 Cr.P.C. & has committed error in rejecting the applications — Documents in question are foundation & basis for the start of the process of the sale of the land — ought to have been permitted to be proved to arrive at any conclusion to find out the criminal intent, if any, on the part of the appellant — Order of the Appellate Court as well as order of the High Court set aside — Appellant was permitted to lead Additional evidence. (Para 19, 20 & 24)*

(B) Interpretation of Statute — Code of Criminal Procedure, 1973 — Section 391 — Term "if it thinks additional evidence to be necessary" — interpretation of — Held, the word "necessary" used in Section 391(1) — is to mean necessary for deciding the appeal. (Para 13)

(C) Code of Criminal Procedure, 1973 — Section 391 — Power of Appellate Court to take additional evidence — Scope & Ambit — additional evidence must be necessary not because it would be impossible to pronounce judgment — but because there would be failure of justice without it. (Para 14)

(D) Interpretation of statutes —Code of Criminal Procedure, 1973 — Section 391 — Intention of legislature —Power of Appellate Court to take additional evidence —Held, there are no fetters on the power u/s 391 of the Appellate Court — All powers are conferred on the Court to secure ends of justice. (Para 16)

(E) Judicial Administration — Establishment of — Object of — The ultimate object of judicial administration is to secure ends of justice — Court exists for rendering justice to the people. (Para 16)

(F) Code of Criminal Procedure, 1973 — Section 391 — Power of Appellate Court to take additional evidence — Application u/s 391 was rejected by appellate Court on the ground that it was filed at belated stage — When the Appellate Court has been given power to lead additional evidence, the observation that it is belated stage was uncalled for. (Para 19)

(G) Code of Criminal Procedure, 1973 — Section 391 — Power of Appellate Court to take additional evidence — Observation of the High Court that —application for additional evidence filed at belated stage —.The appeal was filed on the next date of conviction of the appellant — It was not even mentioned by the High Court that there is anything on record to indicate that appeal was being heard & at this stage the application u/s 391 Cr.P.C. was filed — Held, calling the application as filed at belated stage itself was unjustified. (Para 19)

(H) Code of Criminal Procedure, 1973 — Section 391 — Power of Appellate Court to take additional evidence — Observation of the High Court that —application was filed with some ulterior malafide motive — The appellant had already been convicted by the trial court —Document was on record & referred to by the trial court but was refused to look into on the ground that it was not proved by the appellant — Held, filing of the application before the High Court to accept the certified copy and permit the appellant to lead evidence can in no manner be said to be malafide motive of the accused. (Para 19)

(I) Criminal Appeal — Convicted Accused — right in the appeal — Held, appellant has right to take all the grounds & also lead additional evidence, which in accordance with the Appellate Court is necessary in deciding the appeal — Code of Criminal Procedure, 1973 — Section 391. (Para 19)

(J) Code of Criminal Procedure, 1973 — Section 391 — Power of Appellate Court to take additional evidence — Observation of the High Court that — the application u/s 391 at the appellate stage is filed by appellant for delaying the decision of the appeal to eternity — Prosecution took twelve years' time in leading evidence & the appeal was filed the very next day of conviction — Held, appellant cannot be castigated with the allegation that he intended to delay the appeal to eternity. (Para 20)

(K) Criminal Jurisprudence — Right of the accused in an appeal — When Statute grants right to appeal to an accused, he has right to take all steps and take benefit of all powers of the Appellate Court in the ends of the justice. (Para 20)

(L) Code of Criminal Procedure, 1973 — Section 378 — Appeal against conviction — Duty of the appellate Court — Held, in a criminal case Appellate Court has to consider as to whether conviction of the accused is sustainable or the appellant has made out a case for acquittal. (Para 20)

(M) Pleading & Drafting — Omission of any word — Certified copy of document attached — Held, we fail to see what will be gained by the appellant by reproducing an incorrect clause of the document —non-mention of the word is only a mistake, which is neither deliberate nor with any intent to mislead the Court. (Para 23)

Facts:- *A Regimental Welfare Trust relating to a Regiment of Indian Army was registered. The Trust owned various immovable properties including agricultural land. A Memorandum of Understanding (MOU) was entered with the Trust and respondent No.2 (complainant) and other purchasers for purchase of the land. The complainant paid earnest money. The land being not sold to the complainant, he lodged FIR. u/ss 420/406. Almost similar allegations were made by another person against the same accused wherein.*

The appellant, who was one of the accused alongwith other accused approached the High Court for quashing the FIRs. The High Court observed that the offence u/s 120-B & 406, IPC were not made out it was however, observed that further scrutiny of the factual material would be required to be done at a stage of taking evidence, at that time, contentions of both the parties regarding elements of cheating can be examined with reference to the evidence. High Court further directed that Chief Judicial Magistrate shall take cognizance under Section 420/34 IPC afresh against petitioner Nos. 1 and 2 and issue process accordingly. Prayer for quashing of the FIR and the Charge Sheet was refused. The trial Court convicted the present appellant whereas, the other co-accused died during the trial, the appellant was taken into custody and sent to the prison.

Thereafter, a Criminal Appeal was filed by appellant in the Court of the Sessions, application u/s 391 Cr.P.C. was filed for placing on record the Trust Deed and Resolution passed by the Trust. Another application u/s 391 Cr.P.C. was filed praying for summoning the witnesses to prove the Trust Deed and the Resolution. Both the applications came for consideration before the District Judge, who rejected both the applications. The Appellate Court

opined that lower court's record shows that case is very old and it remained pending in the trial for several years. Sufficient opportunity was given to the accused-appellant to produce evidence in defence. No sufficient ground has been shown why these documents were not got proved in the trial court. Hence, the applications deserve to be rejected. An application u/s 482 Cr.P.C. filed in the High Court was rejected. Feeling aggrieved, the appellant moved the Apex Court in the present appeal.

In the present appeal the honourable Supreme Court considered only the rejection of application filed u/s 391 Cr.P.C. After discussing the factual matrix and legal position, the honourable Supreme Court came to the conclusion that the Appellate Court has failed to exercise its jurisdiction u/s Cr.P.C. and has committed error in rejecting the applications u/s 391 Cr.P.C.. The order of the Appellate Court as well as order of the High Court were set aside. The applications filed u/s 391, CrPC were allowed.

Law of relief:- When certified copy of a document is attached in case of any mistake in the reproduction of the same the complainant cannot be allowed to make any capital of such mistake.

Held:- 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. (Para 13)

Additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it. (Para 14)

From the law laid down by this Court as noted above, it is clear that there are no fetters on the power under Section 391 Cr.P.C. of the Appellate Court. All powers are conferred on the Court to secure ends of justice. The ultimate object of judicial administration is to secure ends of justice. Court exists for rendering justice to the people. (Para-16)

Both the above reasons given by the High Court and relied by the High Court in rejecting the application filed under Section 482 are unfounded. The first observation of the High Court is that filing of additional evidence at such a belated stage. In the facts of the present case we do not approve the above observation. When the Appellate Court has been given power to lead additional evidence, the observation that it is belated stage was uncalled for. Appellant was convicted on 07.10.2013 and appeal was immediately filed on the next date, i.e. 08.10.2013. It was not even mentioned by the High Court that

there is anything on record to indicate that appeal was being heard and at this stage the application under Section 391 Cr.P.C. was filed, calling the application as filed at belated stage itself was unjustified. Further, the observation of the High Court that application was filed with some ulterior malafide motive also does not commend us. The appellant had already been convicted by the trial court, the charge was cheating the complainant with regard to sale of agricultural land of the trust. The second Trust Deed dated 18.10.1989, which was on record and referred to by the trial court and was refused to look into on the ground that it was not proved by the appellant. Filing of the application before the High Court to accept the certified copy of the Trust Deed and the Resolution and permit the appellant to lead evidence can in no manner be said to be malafide motive of the accused, who had been convicted in the appeal, has right to take all the grounds and also lead additional evidence, which in accordance with the Appellate Court is necessary in deciding the appeal. As noted above, this Court has laid down that when it becomes necessary to take additional evidence, cannot be enlisted or enumerated in any fixed formula. 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. Present is a case where it was due to lapse on the part of the appellant and his counsel that the second Trust Deed, which was basis for taking steps for sale of the land could not be proved. (Para-19)

The second observation of the High Court is that the application to take additional evidence at the appellate stage is filed by appellant for delaying the decision of the appeal to eternity, we fail to see that when prosecution took twelve years' time in leading evidence before the trial court and the judgment by trial court was delivered on 07.10.2013, the appeal was filed on 08.10.2013, how can appellant be castigated with the allegation that he intended to delay the appeal to eternity. The observation was unduly misplaced and incorrect. When Statute grants right to appeal to an accused, he has right to take all steps and take benefit of all powers of the Appellate Court in the ends of the justice. In a criminal case Appellate Court has to consider as to whether conviction of the accused is sustainable or the appellant has made out a case for acquittal. The endeavour of all Courts has to reach to truth and justice. The case of the complainant also has been that it is only after execution of the Trust Deed that talks regarding sale of the agricultural land was initiated. Trust Deed and

the Resolution, which are foundation and basis for the start of the process of the sale of the land were documents, which ought to have been permitted to be proved to arrive at any conclusion to find out the criminal intent, if any, on the part of the appellant. (Para-20)

Shri Hargursharan Singh has also contended before us that the appellants are not entitled for any relief since they have not filed correct copy of the Trust Deed before this Court and are trying to mislead this Court. He has referred to Clause (8) of the Trust Deed at Page 28 of the paperbook, where, according to him, the word "not" has not been deliberately typed in Clause (8). Shri Suri appearing for the appellant has very fairly submitted that omission of word "not" in Para No.(8) is only an inadvertent mistake of typing, which could not be checked by the appellant. When the certified copy of the Trust Deed has already been filed before the Appellate Court by the appellant, we fail to see what will be gained by the appellant by reproducing an incorrect clause of the Trust Deed. We are satisfied that non-mention of the word "not" is only a mistake, which is neither deliberate nor with any intent to mislead this Court. The complainant cannot be allowed to make any capital of such mistake. (Para 23)

We, thus, come to the conclusion that in the present case, the Appellate Court has failed to exercise its jurisdiction under Section 391 Cr.P.C. and has committed error in rejecting the applications under Section 391 Cr.P.C. (14 Kha and 17 Kha). The order of the Appellate Court dated 02.11.2015 as well as order of the High Court dated 15.03.2016 are set aside. The applications 14 Kha and 17 Kha stand allowed. We further direct that appellant be permitted to lead oral evidence to prove the contents of the Deed dated 18.10.1989 by leading at-least one witness. The Appellate Court shall receive the additional evidence as directed above and complete the exercise within six months from the date of production of certified copy of this order before it. The Criminal Appeal, thereafter shall be decided expeditiously. The appeal is allowed accordingly. (Para-24)

Cases Referred:-

1. *Parminder Kaur Vs. State of Uttar Pradesh and Another, (2010) 1 SCC 322: AIR 2010 SC 840, (Para-6)*
2. *Rajeswar Prasad Misra Vs. State of West Bengal and Another, AIR 1965 SC 1887, (Para-14)*
3. *Rambhau and Another Vs. State of Maharashtra, (2001) 4 SCC 759, (Para-15)*

JUDGMENT

ASHOK BHUSHAN, J.: - Leave granted. a

2. This appeal has been filed questioning the judgment of Allahabad High Court dated 17.01.2017 dismissing the application filed by the appellant under Section 482 Cr.P.C. wherein the orders passed by the Session Judge dated 02.11.2015 rejecting the two b applications filed by the appellant under Section 391 Cr.P.C. were challenged.

3. Brief facts of the case, which are necessary to be noted for deciding this appeal are:- c

3.1 A Regimental Welfare Trust relating to the Scinde Horse Regiment of Indian Army was registered on 27.06.1959. The Trust owned various immovable properties including agricultural land in Village Bichaie, Phoolpur and Beehat in d Tehsil-Bilaspur, District-Rampur. The respondent No.2 was in possession of 50 acres of agricultural land of the trust since 1975 in Village-Bichaie as thekedar. Other agricultural land of the trust in three villages of Tehsil-Bilaspur were given to different persons as thekedar.

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3.2 The office of Chairman of the Trust is held by the Commandant of Scinde Horse Regiment. On 18.10.1989, a deed of declaration of trust was executed by the Commandant of the Scinde Horse Regiment claiming it to be a new Trust f Deed without changing the nature of the trust. In the deed dated 18.10.1989 (registered at Delhi), details of trust land in District- Rampur were also mentioned, which included 474 Bigha land in Village- Bichaie. One of the clauses mentioned in the Trust Deed was that there may be conversion of the trust g corpus by unanimous approval of all the trustees. On 18.10.1989, a Resolution No.112 was passed by the trustees where it was unanimously decided to authorise Col. Ravi Inder Singh, Brig. Sukhjeet Singh, MVC, Maj. Gen. B.S. Malik h and Ris Maj. Roshanlal to act in the name of the Trust and on behalf of the trustees to sell the trust farm land alongwith buildings thereon situated in villages Bichaie, Phoolpur and Beehat. Resolution also contained other conditions for executing conveyance and for registration of land.

3.3 In pursuance of the Trust Deed and the Resolution dated 18.10.1989, a Memorandum of Understanding (MOU) was entered with Scinde Horse Trust and respondent No.2-Shri Hargursharan Singh (complainant) and other purchasers for purchase of the land. The MOU also contained a condition that payment was required to be made by pay order or by bank draft only in the favour of Scinde Horse Trust. On 28.04.1991, another MOU was executed between Shri Hargursharan Singh (complainant) and other purchasers by which complainant was to acquire 40 acres of land at the rate of Rs.44,000/45,000/- per acre of land. On 03.07.1991, the complainant paid an amount of Rs.100,400/- to Col. Ravi Inder Singh as an earnest money.

3.4 The land being not sold to the complainant, he lodged a First Information Report on 21.12.1991. The case of complainant in the First Information Report was that although complainant agreed to purchase the land of trust at the rate of Rs.44,000/45,000/- and he paid a sum of Rs.100,400/- on 03.07.1991 to Col. Ravi Inder Singh as an earnest money, who assured him that sale shall be executed till 08.07.1991, however, till date, sale has not been executed and accused persons are not ready and willing to execute the sale deed. Complainant further came to know that no permission for the sale of the trust land has been given to the accused persons by the Court. On those allegations, FIR was lodged under Section 420/406 IPC.

3.5 Almost similar allegations were made by one Shri Fateh Singh against the same accused wherein Shri Fateh Singh claimed that he has paid an amount of Rs.75,600/- as an earnest money to Col. Ravi Inder Singh on 03.07.1991 and sale having not been executed, the FIR be registered.

3.6 On FIR filed by the complainant, case Crime No. 315/1991 was registered under Section 420/406 IPC and on FIR submitted by Shri Fateh Singh, case Crime No. 315-A of 1991 was registered under Section 420/406 IPC. On investigation, in both the crime numbers, charge sheet was submitted under Section 419, 420, 467, 471 and 120-B IPC.

3.7 The appellant, who was one of the accused alongwith other accused filed a Criminal Misc. Application

No. 6027 of 1993 and 6028 of 1993 praying for quashing the FIRs in case Crime No. 315 of 1991 and 315-A of 1991 and the orders summoning the accused persons by Chief Judicial Magistrate, Rampur.

3.8 The High Court while noticing the facts of the case noted from both the complaints that receipt of the amount of Rs.1,75,000/- from Shri Hargursharan Singh and Shri Fateh Singh is admitted. High Court further noticed that stamp papers worth Rs.1,75,000/- have been purchased. High Court also noticed that it is admitted fact that permission to sell trust land was applied in the Court of District Judge, but the same was refused on the ground that proper order in that respect can be passed in proceedings under Section 92 of Code of Civil Procedure which was not done. The High Court also noticed that petitioners obtained information from two eminent jurists, including Mr. Soli Sorabji, who opined that the trustees have power to sell the trust land in the instant case. The High Court after noticing the facts had made following observations while deciding the applications:-

> "……..after going through the averments with annexure it appears that there was no dishonest misappropriation of the property by the petitioners as entire sum has been spent for the purposes of purchasing stamp papers. An agreement has been advanced, that stamp paper could not be encashed after a lapse of six months can in no way be attributed dishonest intention to cause harm or injury to respondent no.2 and that is also not the basic allegation against the petitioners. Since there is no misappropriation of Rs.1,76,000/- by any of the petitioners, the charge u.S.406 IPC cannot stand, there is also no allegation with regard to forgery of any document……..."

3.9 High Court came to the conclusion that charge of Conspiracy under Section 120-B against petitioners (applicants) fails. High Court was of the view that further scrutiny of the factual material would be required to be done at a stage of taking evidence, at that time, contentions of both the parties regarding elements of cheating can be examined

with reference to the evidence. High Court refrained to express any opinion with regard to above. High Court, as a result of the above consideration, allowed the applications in part, set aside the order passed by the Chief Judicial Magistrate. High Court further directed that Chief Judicial Magistrate shall take cognizance under Section 420/34 IPC afresh against petitioner Nos. 1 and 2 and issue process accordingly. Prayer for quashing of the First Information Report and the Charge Sheet was refused. Petitioner Nos. 3 and 4 were also discharged.

3.10 After the above order of the High Court dated 09.11.1995, charges were framed on 18.11.1996 under Section 420/34 IPC. On 17.11.2000, prosecution evidence started. Prosecution completed its evidence on 21.11.2012. Thereafter, evidence of defence was also recorded and trial court delivered its judgment on 07.10.2013 convicting the appellant under Section 420 read with Section 34 IPC and awarded sentence of five years simple imprisonment and fine of Rs.25,000/-. The other co-accused Col. Ravi Inder Singh having died during the trial, the appellant was taken into custody and sent to the prison.

3.11 On 08.10.2013, a Criminal Appeal No.57 of 2013 was filed by appellant in the Court of the Sessions Judge, Rampur. On 26.06.2014, application under Section 391 Cr.P.C. (14 Kha) was filed for placing on record the said Trust Deed dated 18.10.1989 and Resolution No. 112. In the application, it was stated that Trust Deed was registered with the Registrar of Delhi and the photocopy of the Trust Deed is available on record of the Lower Court being paper No. 30Kha/46, which has also been mentioned in the impugned judgment. Certified copy was filed alongwith the application with a prayer that the document be kindly taken on record and certified copy of the Resolution passed by the trustees was filed, which was prayed to be taken on record.

3.12 Another application under Section 391 Cr.P.C. (17 Kha) was filed on 15.07.2014 praying for summoning the witnesses to prove the Trust Deed dated 18.10.1989 and Resolution No.112. Both the applications came for consideration before the District Judge, who by its order dated

02.11.2015 rejected both the applications. The Appellate Court opined that lower court's record shows that case is very old and it remained pending in the trial for several years. Sufficient opportunity was given to the accused-appellant to produce evidence in defence. No sufficient ground has been shown why these documents were not got proved in the trial court. Hence, the applications deserve to be rejected.

3.13 Against the order dated 02.11.2015, an application under Section 482 Cr.P.C. was filed in the High Court by the applicant, which has been rejected by the High Court vide its impugned judgment dated 17.01.2017. High Court was of the view that the applications filed by the applicant for filing additional evidence at such a belated stage appears to be with some ulterior malafide motive or for delaying the decision of the appeal to eternity. High Court rejected the application filed under Section 482 Cr.P.C. Feeling aggrieved, the appellant has come up in this appeal.

4. We have heard Shri R.S. Suri, learned senior counsel for the appellant. Shri Ratnakar Das, learned counsel had appeared on behalf of the State of U.P. Shri Hargursharan Singh, respondent No.3-complainant had appeared in person and has been heard at length.

5. Shri R.S. Suri, learned senior counsel for the appellant submits that Appellate Court committed error in rejecting the applications filed by the appellant under Section 391 Cr.P.C. Learned senior counsel submits that the appellant before this Court is a retired Brigadier of Indian Army, who had distinguished and meritorious services in the Armed Forces. He was also awarded Maha Vir Chakra in the 1971 war. The appellant was trustee of the trust and was authorised by the trust alongwith other members to sell the trust land. Appellant did not receive a single rupee from the complainants. The complainant (Shri Hargursharan Singh) has claimed to have paid Rs.100,400/-to Col. Ravi Inder Singh and another complainant (Fateh Singh) had paid Rs.75,600/- to Col. Ravi Inder Singh. Stamp Duty amounting to Rs.1,75,000/- was purchased which document was on the record. No amount was misappropriated or used by the appellant or trust. The allegation of cheating or fraud made against the appellant is wholly false and incorrect. The second Trust Deed dated 18.10.1989 was also on the record (photocopy filed by the complainant himself), which has been noticed by the trial court in its judgment as

paper No. 30Kha/46. Due to lapse on part of the appellant and his counsel, above Trust Deed and the Resolution authorising the trustees could not be proved before the trial court, whereas the above Trust Deed and Resolution were noticed and proved in the case Crime No. 315-A of 1991 filed by Shri Fateh Singh.

6. Learned senior counsel further submits that in case Crime No. 315-A of 1991, which was based on the same allegations against the appellant, the trial court vide its judgment and order dated 30.11.2015 had acquitted the appellant from the charge under Section 420/34 IPC. The trial court in the above case has noticed the second Trust Deed as well as Resolution No.112, which were duly proved. It is submitted that it is lapse that the second Trust Deed and Resolution, which were basis for entering into MOU with complainant for sale of trust land could not be proved, whereas they were referred to and were part of the record and proved in other case. Shri Suri submits that Appellate Court committed error in not exercising jurisdiction under Section 391 Cr.P.C. in accepting the documents on record and not permitting the appellant to lead evidence to prove the said documents, which has resulted in failure of justice. Shri Suri further submits that the FIR lodged by the complainant was another example of malicious prosecution of the appellant. He submits that this Court in ***Parminder Kaur Vs. State of Uttar Pradesh and Another, (2010) 1 SCC 322: AIR 2010 SC 840***, while quashing the proceeding arisen out of complaint lodged by Hargursharan Singh has observed that Hargursharan Singh lodged malicious and vengeance full prosecution case against his sister- in-law, which was quashed by this Court.

7. Shri Suri further submits that the Appellate Court for finding out and to ensure that no innocent person is convicted, ought to have given opportunity to the appellant to lead evidence to prove the second Trust Deed and the Resolution, denial of which has caused immense injustice.

8. Shri Ratnakar Das, learned counsel appearing for the State of U.P. submits that power under Section 391 Cr.P.C. has to be exercised sparingly and in the ends of justice. He submits that permitting the appellant to lead evidence to prove the second Trust Deed and Resolution will involve a fresh trial. He further submits that even if a certified copy of the Trust Deed dated 18.10.1989 is taken on record, that shall not serve any purpose. He candidly submits that he

has no objection if documents are accepted on record but given opportunity to lead evidence shall consume a lot of time, which shall delay the disposal of the appeal. He submits that even in the prayer made in the application (17-Kha), no witness has been listed, who can prove the documents. The mere fact that registration of documents is proved, shall not mean that contents are also proved.

9. Shri Hargursharan Singh, appearing in-person has supported the order passed by the Session Judge rejecting the application filed under Section 391 Cr.P.C. by the appellant. He submits that this SLP has been filed only with intent to delay the disposal of the criminal appeal. He submits that the appellant had not obtained permission from the District Judge for sale of the land and the District Judge had rejected the application on 27.10.1989 and despite the rejection of the application, the appellant and other members of the trust proceeded with their design to sell the land, which led the complainant to pay amount of Rs.100,400/- to Col. Ravi Inder Singh. The appellant was convicted on 07.10.2013 and the application under Section 391 Cr.P.C. was filed after nine months. Opportunity to lead evidence in the defence was availed by the appellant. The Session Judge has rejected the application filed under Section 391 Cr.P.C. by giving cogent reasons. High Court has also rightly upheld the said order, which needs no interference by this Court. The application has been filed by the appellant just to cover his offence. The appellant has been approbating and reprobating at the same time. The document dated 18.10.1989 is already on the file and hence there is no necessity to bring it again. Original Trust Deed was registered on 27.06.1959 at Rampur, which is still valid. In spite of permission having been refused, the appellants have been contending that they have still right to sell the property. Shri Hargursharan Singh further submitted that appellant had committed forgery and fraud. He has referred to Page 28 of the paperbook, Para No.8 and submitted that in para No.8 the word "not" has been deleted from Clause 8, which shows that the appellants have not come with the clean hands before this Court and they have concealed the true clause of Trust Deed from this Court also. He further submits that this Court should monitor the hearing of the Criminal Appeal pending before Sessions Judge.

10. We have considered the submissions of the parties and have perused the records.

11. In the present appeal, we are concerned only with the rejection of application filed by the appellant under Section 391 Cr.P.C. before the Session Judge in the criminal appeal filed by him against the conviction order, whether the Session Judge committed error in not exercising power under Section 391 Cr.P.C. to permit the appellant to lead additional evidence is a question to be answered. Whether the High Court committed error in not exercising power under Section 482 Cr.P.C. as to secure the ends of justice?

12. Chapter XXIX of the Code of Criminal Procedure, 1973 deals with "Appeals". Section 391 Cr.P.C. empowers the Appellate Court to take further evidence or direct it to be taken. Section 391 is as follows:-

> **"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.
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> (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.
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> (3) The accused or his pleader shall have the right to be present when the additional evidence is taken.
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> (4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

13. 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. The appeal has been filed by the accused, who have been convicted. The powers of Appellate Court are contained in Section 386. In an appeal from a conviction, an Appellate Court can exercise power under Section 386 (b), which is to the following effect:-

> (b) in an appeal from a conviction-
>
> (i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re- tried by a Court

of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the Same;

14. Power to take additional evidence under Section 391 is, thus, with an object to appropriately decide the appeal by the Appellate Court to secure ends of justice. The scope and ambit of Section 391 Cr.P.C. has come up for consideration before this Court in ***Rajeswar Prasad Misra Vs. State of West Bengal and Another, AIR 1965 SC 1887***. Justice Hidayatullah, speaking for the Bench held that a wide discretion is conferred on the Appellate Courts and the additional evidence may be necessary for a variety of reasons. He held that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it. Following was laid down in Paragraph Nos. 8 and 9:-

> **"8.** ……Since a wide discretion is conferred on appellate courts, the limits of that courts' jurisdiction must obviously be dictated by the exigency of the situation and fair play and good sense appear to be the only safe guides. There is, no doubt, some analogy between the power to order a retrial and the power to take additional evidence. The former is an extreme step appropriately taken if additional evidence will not suffice. Both actions subsume failure of justice as a condition precedent. There the resemblance ends and it is hardly proper to construe one section with the aid of observations made by this Court in the interpretation of the other section.
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> **9.** Additional evidence may be necessary for a variety of reasons which it is hardly proper to construe one section with the aid of observations made to do what the legislature has refrained from doing, namely, to control discretion of the appellate court to certain stated circumstances. It may, however, be said that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it. The

power must be exercised sparingly and only in suitable cases. Once such action is justified, there is no restriction on the kind of evidence which may be received. It may be formal or substantial. It must, of course, not be received in such a way as to cause prejudice to the accused as for example it should not be received as a disguise for a retrial or to change the nature of the case against him. The order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it unless the requirements of justice dictate otherwise……."

15. This Court again in ***Rambhau and Another Vs. State of Maharashtra, (2001) 4 SCC 759*** had noted the power under Section 391 Cr.P.C. of the Appellate Court. Following was stated in Paragraph Nos. 1 and 2:-

"1. There is available a very wide discretion in the matter of obtaining additional evidence in terms of Section 391 of the Code of Criminal Procedure. A plain look at the statutory provisions (Section 391) would reveal the same……

2. A word of caution however, ought to be introduced for guidance, to wit: that this 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 retrial or to change the nature of the case against the accused. This Court in the case of *Rajeswar Prasad Misra v. State of W.B.* in no uncertain terms observed that the order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it. This Court was candid enough to record however, that it is the concept of justice which ought to prevail and in the event, the same dictates exercise of power as conferred by the Code, there ought not to be any hesitation in that regard."

16. From the law laid down by this Court as noted above, it is clear that there are no fetters on the power under Section 391 Cr.P.C. of the Appellate Court. All powers are conferred on the Court to secure ends of justice. The ultimate object of judicial administration is to secure ends of justice. Court exists for rendering justice to the people.

17. Now, we revert to the facts of the present case to examine as to whether present was the case for exercise of the power by the Appellate Court under Section 391 Cr.P.C. to permit adducing the additional evidence at the appellate stage. The facts as noted above indicate that the trust is admittedly the owner of agricultural land in Village Bichaie. The complainant has been in possession of large number of agricultural lands as thekedar of the trust since 1975, according to his own case, which he even mentioned in the First Information Report. The application under Section 391 Cr.P.C. was made in the Appellate Court to accept certified copy of the Trust Deed dated 18.10.1989 and the Resolution No. 112 dated 18.10.1989 and permitting the appellant to prove the said document by leading oral evidence. The reference of Trust Deed has been made by the trial court in its judgment dated 07.10.2013. The trial court in its judgment had observed "the copy of the Trust Deed dated 18.10.1989 is available on record being paper No.30Kha/46". The trial court further has observed that "it is pertinent to mention here that the accused had not proved the Trust Deed dated 18.10.1989 by way of evidence".

18. What was available on the record was the photocopy of the Trust Deed. Due to non-proving of the Trust Deed, the trial court has not adverted to the Trust Deed and the Resolution, which were relevant to understand and know the conduct of the appellant and other trustees for entering in the MOUs for sale of agricultural land. The facts as noted above indicate that prosecution started recording its evidence on 17.11.2000, which was completed on 21.11.2012. A period of twelve years was taken by the prosecution to lead its evidence and after 21.11.2012, the judgment was delivered on 07.10.2013. The appellant was convicted for offences under Section 420/34 IPC accepting the charge that complainant was cheated with regard to sale of agricultural land of the Trust. The High Court while rejecting the application filed under Section 482 Cr.P.C. of the appellant has made following observations:-

> "…….The present exercise initiated by the applicant for filing additional evidence at such a belated stage appears to be with some ulterior malafide motive or delaying the decision of the appeal to eternity……."

19. Both the above reasons given by the High Court and relied by the High Court in rejecting the application filed under Section 482 are unfounded. The first observation of the High Court is that filing of

additional evidence at such a belated stage. In the facts of the present case we do not approve the above observation. When the Appellate Court has been given power to lead additional evidence, the observation that it is belated stage was uncalled for. Appellant was convicted on 07.10.2013 and appeal was immediately filed on the next date, i.e. 08.10.2013. It was not even mentioned by the High Court that there is anything on record to indicate that appeal was being heard and at this stage the application under Section 391 Cr.P.C. was filed, calling the application as filed at belated stage itself was unjustified. Further, the observation of the High Court that application was filed with some ulterior malafide motive also does not commend us. The appellant had already been convicted by the trial court, the charge was cheating the complainant with regard to sale of agricultural land of the trust. The second Trust Deed dated 18.10.1989, which was on record and referred to by the trial court and was refused to look into on the ground that it was not proved by the appellant. Filing of the application before the High Court to accept the certified copy of the Trust Deed and the Resolution and permit the appellant to lead evidence can in no manner be said to be malafide motive of the accused, who had been convicted in the appeal, has right to take all the grounds and also lead additional evidence, which in accordance with the Appellate Court is necessary in deciding the appeal. As noted above, this Court has laid down that when it becomes necessary to take additional evidence, cannot be enlisted or enumerated in any fixed formula. 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. Present is a case where it was due to lapse on the part of the appellant and his counsel that the second Trust Deed, which was basis for taking steps for sale of the land could not be proved.

20. The second observation of the High Court is that the application to take additional evidence at the appellate stage is filed by appellant for delaying the decision of the appeal to eternity, we fail to see that when prosecution took twelve years' time in leading evidence before the trial court and the judgment by trial court was delivered on 07.10.2013, the appeal was filed on 08.10.2013, how can appellant be castigated with the allegation that he intended to delay the appeal to eternity. The observation was unduly misplaced and incorrect. When Statute grants right to appeal to an accused, he has right to take all steps and take benefit of all powers of the Appellate

Court in the ends of the justice. In a criminal case Appellate Court has to consider as to whether conviction of the accused is sustainable or the appellant has made out a case for acquittal. The endeavour of all Courts has to reach to truth and justice. The case of the complainant also has been that it is only after execution of the Trust Deed that talks regarding sale of the agricultural land was initiated. Trust Deed and the Resolution, which are foundation and basis for the start of the process of the sale of the land were documents, which ought to have been permitted to be proved to arrive at any conclusion to find out the criminal intent, if any, on the part of the appellant.

21. It is further relevant to notice that in case Crime No. 315-A of 1991 filed by Shri Fateh Singh, who was also one of the purchasers and lodged the FIR on same allegations. In the said case, the second Trust Deed dated 18.10.1989 was filed and proved and ultimately, the appellant has been acquitted in the said case by judgment dated 30.11.2015, which has been brought on record as Annexure P-14. In the other criminal case, which was on the same allegations and which were also based on same MOU regarding sale of agricultural land, where amount of Rs.75,600/- was also paid by Shri Fateh Singh, on the same date, the Trust Deed was filed and proved relying on which acquittal of the appellant has been recorded. It has been further submitted by the appellant that reference of the judgment of the acquittal dated 30.11.2015 has also been made before the High Court, but High Court did not advert to the said judgment.

22. In the facts of the present case, we are of the view that Appellate Court committed error in not exercising jurisdiction under Section 391 Cr.P.C. in accepting the second Trust Deed dated 18.10.1989 and the Resolution No.112 dated 18.10.1989 and refusing the appellant to lead evidence to prove the documents.

23. Shri Hargursharan Singh has also contended before us that the appellants are not entitled for any relief since they have not filed correct copy of the Trust Deed before this Court and are trying to mislead this Court. He has referred to Clause (8) of the Trust Deed at Page 28 of the paperbook, where, according to him, the word "not" has not been deliberately typed in Clause (8). Shri Suri appearing for the appellant has very fairly submitted that omission of word "not" in Para No.(8) is only an inadvertent mistake of typing, which could not be checked by the appellant. When the certified copy of the Trust Deed has already been filed before the Appellate Court by the

appellant, we fail to see what will be gained by the appellant by reproducing an incorrect clause of the Trust Deed. We are satisfied that non-mention of the word "not" is only a mistake, which is neither deliberate nor with any intent to mislead this Court. The complainant cannot be allowed to make any capital of such mistake.

24. We, thus, come to the conclusion that in the present case, the Appellate Court has failed to exercise its jurisdiction under Section 391 Cr.P.C. and has committed error in rejecting the applications under Section 391 Cr.P.C. (14 Kha and 17 Kha). The order of the Appellate Court dated 02.11.2015 as well as order of the High Court dated 15.03.2016 are set aside. The applications 14 Kha and 17 Kha stand allowed. We further direct that appellant be permitted to lead oral evidence to prove the contents of the Deed dated 18.10.1989 by leading at-least one witness. The Appellate Court shall receive the additional evidence as directed above and complete the exercise within six months from the date of production of certified copy of this order before it. The Criminal Appeal, thereafter shall be decided expeditiously. The appeal is allowed accordingly.

***Result*:-** Appeal allowed.

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ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Uday Umesh Lalit & Dr. Dhananjaya Y. Chandrachud, JJ.)

Criminal Appeal No. 56 of 2019

(Arising out of Special Leave Petition (Crl.) No.8143 of 2018)

(From Allahabad High Court)

Decided On 11 January, 2019

SRI SURESH KUMAR GOYAL AND OTHERS - Appellant(s).

Versus

STATE OF UTTAR PRADESH AND ANOTHER - Respondent(s).

Law Covered*:-** ***(A) Code of Criminal Procedure, 1973 — Section 482 — Quashing of the proceedings at the stage of issuance of process — or at the stage of committal— or at the stage of framing of charges— before the commencement of actual trial —Steps to be considered by High Court — (i) whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is