10 CA 607/2025

SURENDER TANWAR
Vs.
SUNNY KUMAR alias SUNNY BAISOYA
CNR-DLST01-018747-2025

22.07.2026

Present: Mr. Rajesh Sherawat, Advocate for the appellant.

Mr. Rajesh Bagga, Advocate for the respondent.

I.A. No. 1/2026 (Old No. – Crl.M.A. No. 19036/2016)
Application u/Sec 391 CrPC – Permission to lead additional evidence

1) This order shall dispose of the application moved by the appellant/complainant, Surender Tanwar, under Section 391 of the Code of Criminal Procedure, 1973 (CrPC) seeking permission of this Appellate Court for taking additional evidence on record.

2) Briefly stated, the facts of the complaint before the learned Trial Court were that the respondent/accused had approached the complainant for a friendly loan of ₹12,00,000/- in the year 2010 to repay a house loan. In discharge of his liability, the accused issued three cheques (bearing Nos. 356124, 356139, and 253551) in favour of the complainant. Upon presentation, the cheques were dishonoured and returned unpaid with the remarks "Account Closed" *vide* return memo dated 13.09.2011. Despite the service of the statutory legal demand notice dated 13.10.2011, the accused failed to make the

payment within the stipulated period, leading to the institution of the complaint under Section 138 of the Negotiable Instruments Act, 1881.

3) The learned Trial Court, *vide* the impugned judgment dated 06.09.2016, acquitted the accused for the offence under Section 138 of the NI Act. In its holding, the learned Trial Court observed that the complainant, during his cross-examination, had testified that a receipt for the cash loan of ₹12,00,000/- was signed by the accused, but the same was not traceable and hence not produced.

4) The learned Trial Court appropriately invoked Section 114, Illustration (g) of the Indian Evidence Act, 1872, holding that the non-production of this crucial receipt cast a shadow of doubt on the complainant's version, raising the presumption that such a receipt was never executed. Furthermore, the Trial Court held that advancing a sum of ₹12,00,000/- in cash was unaccounted money in contravention of Section 269SS of the Income Tax Act, thereby rendering the transaction legally unenforceable.

5) In the present application under Section 391 CrPC, the appellant has urged grounds that the said receipt, which was untraceable at the time of the trial, has now been found and should be brought on record as additional evidence. The appellant contends that since he had categorically deposed about the existence of this receipt during his cross-examination, and the accused did not deny the execution of the said receipt, the appellant should now be permitted to lead this receipt as additional evidence for the fair disposal of the appeal.

6) In the present application under Section 391 CrPC, the appellant has urged grounds that the said receipt, which was untraceable at the time of the trial, has now been found and should be brought on record as additional evidence. The appellant contends that since he had categorically deposed about the existence of this receipt during his cross-examination on 07.08.2015, and the accused did not insist on its production or seek directions from the Trial Court to produce it, the appellant should now be permitted to lead this receipt as additional evidence in the interest of justice.

7) Mr. Sherawat learned counsel for the appellant advanced submissions in tandem with the averments made in the application. The learned counsel urged that the appellant was the complainant before the Trial Court and during the recording of his testimony, voluntarily stated that the receipt was untraceable. The learned counsel further submitted that the legal principle about Section 391 CrPC is well settled that the Appellate Court must use this power sparingly and in exceptional cases.

8) Mr. Sherawat learned counsel urged that the case at hand is covered under the exception because the complainant, while recording his testimony before the Trial Court, clearly stated that the receipt in question was untraceable and he found the same at a later stage and hence, the present application.

9) On the other hand, Mr. Rajesh Bagga, learned counsel for the respondent, has contended the submissions advanced by learned counsel for the appellant. The learned counsel urged that the present

application is nothing but an utter abuse of process of law and the same may be dismissed with exemplary cost.

10) Mr. Bagga learned counsel urged that the present application is nothing but an attempt by the appellant to fill the lacuna in the case and circumvent the findings of the Trial Court in the impugned judgment.

11) I have carefully considered the submissions and perused the record.

12) Section 391 of the CrPC, 1973 empowers the Appellate Court to take further evidence if it considers that such additional evidence is necessary for a just decision of the case. However, it is a settled principle of law that this power must be exercised sparingly and cannot be wielded as a tool to fill up lacunae in the prosecution's (read as complainant's) case or to patch up the weak points of the complainant at the appellate stage.

13) A meticulous perusal of the purported receipt dated 20.03.2010, which is sought to be placed on record, reveals that it allegedly bears the signature of an attesting witness named Mangatram (Rohit). It is highly imperative to mention here that the name of the said witness, Mangatram (Rohit), has neither been mentioned in the original complaint filed under Section 138 of the NI Act nor anywhere in the complainant's testimony (CW-1) recorded on 07.08.2015 before the learned Trial Court.

14) The sudden emergence of a document at the appellate stage introducing a previously undisclosed and unpleaded witness casts a serious cloud of doubt over the authenticity and credibility of the proposed additional evidence. Permitting such evidence at this belated stage would severely prejudice the accused/respondent and would amount to allowing the appellant/complainant to introduce an entirely new case.

15) For the foregoing reasons, the application moved by the appellant/complainant, Surender Tanwar, under Section 391 of the CrPC, 1973 for taking additional evidence on record is devoid of any merit and is, accordingly, dismissed. No order as to costs.

CA No. 604/2025

16) Written submissions filed on behalf of the appellant/complainant alongwith judgment titled as ***Sri Gopalaiah v. K.Manjunath, Crl. Appeal No. 583/2016*** passed by Hon'ble Supreme Court of India and ***Lekh Raj Sharma v. Yash Pal Gupta, Crl. L.P. 567/2014*** passed by Hon'ble High Court of Delhi. Copy supplied. The same are taken on record.

17) Arguments heard. Reserved for judgment.

18) To come up for pronouncement of judgment on **30.07.2026 at 04:00P.M.**

Hargurvarinder Singh jaggi

Digitally signed by Hargurvarinder Singh jaggi
Date: 2026.07.22 16:45:16 +0530

(Hargurvarinder Singh Jaggi)
ASJ (FTC)–01, South District
Saket, New Delhi/22.07.2026
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