KAHV010003822026

IN THE COURT OF I ADDL. DISTRICT & SESSIONS JUDGE, AT HAVERI.

DATED THIS THE 25th DAY OF JULY, 2026

PRESENT

SRI. N.M.Ramesha, *B.com, LL.B., LLM*
I Addl. District & Sessions Judge, Haveri.

Criminal Appeal No.11/2026

Appellant	:	Basavaraj S/o Ramappa Hadimani. *(Sri. J.B. Kalashetti., Advocate)*
	V/s	
Respondent	:	D. Shankar Sundar. *(Sri. V.S. Patil., Advocate)*

ORDERS ON APPLICATION UNDER SECTION 391 R/W SECTION 311 OF CR.P.C.,

This is an application filed by the Learned counsel for the appellant/complainant under the provisions of Section 391 R/w Section 311 of Cr.P.C., seeking permission to adduce additional evidence by producing the bank statement on the ground that, he has filed a complaint against the respondent/accused for the offence punishable under Section 138 of N.I.Act. It is very much necessary to mark the Bank statement issued by the Manager of Canara Bank Haveri, Manager of Bank of India and Manager Suvarna Co-operative Society Haveri, from 01.01.2014 to 31.12.2016. 04.02.2014 to 31.10.2016 and 06.04.2015 to 07.11.2016. If the application is not allowed, then the appellant will be put to untold hardship. The above statements are very much necessary for marking in favour of the appellant to prove that amount issued to respondent by the appellant which is legally enforceable and to prove capability of the appellant. Hence, this application.

2. The Learned counsel for the respondent/accused has filed detailed objections contending that the application under Section 391 and 311 of Cr.P.C., seeking permission to produce additional documents and to summon witness or examine any person at the appellate stage is wholly misconceived and not maintainable either under law or on facts. The appeal has been sent back to this Court by the Hon'ble High Court of Karnataka as per the decision of M/s Celestium Financial V/s. Gnanasekaran and therefore, it does not create any automatic rights to appellant to led fresh evidence by producing additional documents at the appellate stage. The Appellant is trying to have an undue advantage of opportunity, but, he cannot do so. The present attempt is nothing but an effort to fill up the lacunae, omission and defects after an order of acquittal. The appellant being a practicing advocate, having more than 20 years of practice and supposed to well conversant with the legal procedures, rules of evidence and requirements of conducting a complaint under Section 138 of N.I.Act and expected to possess higher standard of diligence than an ordinary litigant or common man. The appellant had consciously conducted criminal case No.116/2018 and led evidence and closed his side. The documents sought to be produced were available with the custody and possession of complainant during the course of trial and he had all opportunity before the Trial Court to produce all evidences in support of his financial capacity and legally enforceable debt and ought to have given a chance to respondent /accused for cross examine to that effect, but having failed to do so, the complainant cannot invoke Section 391 of Cr.P.C., to patch up weaknesses in his case at appellate stage.

3. The appellant cannot contend that, he was unaware of the necessity of producing documents or did not know the importance of examining witnesses or in inadvertently omitted material evidences and was prevented by procedural ignorance from producing the documents and evidences. The power under Section 391 Cr.P.C. is an exceptional power and cannot be exercised routinely or casually. The production of additional documents or summoning of witnesses can only be permitted if the party establishes due diligence, inability to produce the evidence despite such diligence and failure to receive such evidence which resulted in miscarriage of justice. But the appellant has not shown any reasons as to why these documents were not produced before the Trial Court and what prevented him from summoning and examining witnesses of his choice during trial and how the documents suddenly become necessary after well reasoned acquittal order by trial court since about 8 years ago. The alleged documents sought to be produced are electronically generated account statements obtained from different bank authorities, but no independent certificate under Section 65-B(4) of Indian Evidence Act accompanied by an appellant for proposed electronic evidence. The application is a clear abuse of process of law and filed with an intention to reopen the entire case, to cure fatal defects and negligence in the evidence of complainant and to harass the respondent after about 8 years of acquittal. The bank statements sought to be produced are not newly discovered documents and they were always within the knowledge, possession and custody of the complainant. Therefore, permitting the complainant to produce additional evidence and to adduce evidence at belated stage of 8 years, would cause serious prejudice to the respondent/accused and therefore, the complainant cannot be permitted to convert the appellate proceedings inyto de novo trial under the guise of Section 391 and 311 of Cr.P.C., which is not permissible in the eye of law. It is on these among other grounds, the respondent/accused has prayed for dismissal of the application.

4. I have heard the arguments of both the side and perused the application, objection and materials on record.

5. Now the points that would arise for my consideration are as under:

1. Whether the appellant/complainant has made out sufficient grounds to come to the conclusion that the Trial Court from whose judgment the appeal is preferred has refused to admit the evidence which ought to have been admitted, or whether the appellant/complainant establishes that notwithstanding the exercise of due diligence, such evidence was not within its knowledge or could not, after the exercise of due diligence, be produced by him at the time when the judgment appealed against was passed, or whether the proposed documents sought to be produced and witnesses sought to be summoned, enable this Court to pronounce judgment, or for any other substantial cause

and whether the application filed under the provisions of Section 391 and 311 of Cr.P.C., is deserves to be allowed or not ? ?

2. What order ?

6. On considering the materials placed on record, now my answers to the above points are as under:

Point No.1 : In the **Negative**,
Point No.2 : As per final order
for the following:

REASONS

7. **POINT NO.1:** The Learned counsel for the appellant/complainant has argued with force that it is very much necessary to mark the Bank statements issued by the Manager of Canara Bank Haveri, Manager of Bank of India and Manager Suvarna Co-operative Society Haveri, from 01.01.2014 to 31.12.2016. 04.02.2014 to 31.10.2016 and 06.04.2015 to 07.11.2016 and if the application is not allowed, then the appellant will be put to untold hardship and the statements are very much necessary for marking in favour of the appellant to prove that amount issued to respondent by the appellant which is legally enforceable and to prove capability of the appellant and hence, application is deserves to be allowed.

8. Per-contra, the Learned counsel for the respondent/accused has vehemently contended that, the appellant being a practicing advocate, having more than 20 years of practice and supposed to well conversant with the legal procedures, rules of evidence and requirements of conducting a complaint under Section 138 of N.I.Act and expected to possess higher standard of diligence than an ordinary litigant or common man and the appellant had consciously conducted criminal case No.116/2018 and led evidence and closed his side and the documents sought to be produced were available with the custody and possession of complainant during the course of trial and he had all opportunity before the Trial Court to produce all evidences in support of his financial capacity and legally enforceable debt and ought to have given a chance to respondent/accused for cross examine to that effect, but having failed to do so, the complainant cannot invoke Section 391 of Cr.P.C., to patch up weaknesses in his case at appellate stage.

9. It is further contended by the Learned counsel for the respondent/accused that, the appellant cannot contend that, he was unaware of the necessity of producing documents or did not know the importance of examining witnesses or in inadvertently omitted material evidences and was prevented by procedural ignorance from producing the documents and evidences as the power under Section 391 Cr.P.C. is an exceptional power and cannot be exercised routinely or casually and the production of additional documents or summoning of witnesses can only be permitted if the party establishes due diligence, inability to produce the evidence despite such diligence and failure to receive such evidence which resulted in miscarriage of justice, but the appellant has not shown any reasons as to why these documents were not produced before the Trial Court and what prevented him from summoning and examining witnesses of his choice during trial and how the documents suddenly become necessary after well reasoned acquittal order by trial court since about 8 years ago.

10. It is further contended by the Learned counsel for the respondent/accused that, the alleged documents sought to be produced are electronically generated account statements obtained from different bank authorities, but no independent certificate under Section 65-B(4) of Indian Evidence Act accompanied by an appellant for proposed electronic evidence and the application is a clear abuse of process of law and filed with an intention to reopen the entire case, to cure fatal defects and negligence in the evidence of complainant and to harass the respondent after about 8 years of acquittal and the bank statements sought to be produced are not newly discovered documents and they were always within the knowledge, possession and custody of the complainant and therefore, permitting the complainant to produce additional evidence and to adduce evidence at belated stage of 8 years, would cause serious prejudice to the respondent/accused and therefore, the complainant cannot be permitted to convert the appellate proceedings into de novo trial under the guise of Section 391 and 311 of Cr.P.C., which is not permissible in the eye of law and therefore, the application is deserves to be dismissed.

11. In support of his submissions, the Learned counsel for the respondent/accused has relied upon a decision reported in (***2020) AIR (SC) 4908*** in between ***Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others***, wherein while dealing with the provisions of Section65B(4) of Evidence Act, 1872, the Hon'ble Supreme Court has pleased to held that under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

12. The Learned counsel for the respondent/accused also relied upon a decision reported in ***(2011) 4 SCC 402*** in between ***Ashok Tshering Bhutia Vs. State of Sikkim***, wherein while dealing with the provisions of Section 391 Cr.P.C., the Hon'ble Supreme Court has pleased to held that, Section 391 forms an exception to the general rule that an Appeal must be decided on the evidence which was before the Trial Court and the powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice. Be it noted further that the doctrine of finality of judicial proceedings does not stand annulled or affected in any way by reason of exercise of power u/s 391 since the same avoids a de novo trial. It is not to fill up the lacuna but to subserve the ends of justice. Needless to record that on an analysis of the CPC Code, Section 391 is thus akin to Order 41, Rule 27 of the C.P. Code. However, the provisions of Section 391 Code of Criminal Procedure cannot be pressed into service in order to fill up lacunae in the prosecution's case.

13. The Learned counsel for the respondent/accused also relied upon a decision rendered by the Hon'ble High Court of Karnataka in ***Criminal Petition No.12045 of 2024*** in between ***Sri. J. Ramesh Vs. M/S. Lakshmi Precious Jewellery Pvt. Ltd***., wherein while dealing with the provisions of Section 391 of Cr.P.C., the Hon'ble High Court of Karnataka has pleased to held that power to record additional evidence under Section 391 of Cr.P.C should only be exercised when the party making such request as prevented from presenting the evidence in the trial despite due diligence being exercised 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.

14. The Learned counsel for the respondent/accused also relied upon a decision rendered by the Hon'ble Supreme Court of India in ***Criminal Appeal No.2848 of 2026*** in between ***The State of Tripura Vs. Panna Ahmed***, wherein while dealing with the provisions of Section 311 of Cr.P.c., the Hon'ble Supreme Court has pleased to held that, the power conferred under Section 311 of the CrPC is undoubtedly wide; however, such power is required to be exercised sparingly and in judicious manner, and not arbitrarily.

15. In order to appreciate the rival contentions raised by both the side, it is just and necessary to go through the provisions of Sections 391 and 311 of Cr.P.C.

16. The provisions of Section 391 of Cr.P.C., is deals about with the appellate court taking further evidence or direct it to be taken. As per this provision of law 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 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.**

17. The provisions of Section 311 of Cr.P.C., is deals about Power to summon material witness, or examine person present. As per this provision of law any court may, at any stage of any inquiry, trial or other proceeding under this section, summon any person as a witness, or examine any person in attendance, though not summoned as a witness or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to just decision of the case.

18. Now keeping the arguments canvassed by both the side, above said provisions of law and the principles laid down in the above cited decisions in mind, let us consider as to whether the appellant/complainant satisfies that the Court from whose judgment the appeal is preferred has refused to admit the evidence which ought to have been admitted, or establishes that notwithstanding the exercise of due diligence, the proposed documents sought to be produced under the application were within the knowledge or could not after the exercise of due diligence, be produced by him at the time when the judgment appealed against was passed and whether the proposed documents sought to be produced and witnesses sought to be summoned, enable this Court to pronounce judgment, or for any other substantial cause and whether the application filed by the appellant/complainant under the provisions of Section 391 R/w Section 311 of Cr.P.C. is deserves to be allowed or not.

19. It is stated in the application that, it is very much necessary to mark the Bank statements issued by the Manager of Canara Bank Haveri, Manager of Bank of India and Manager Suvarna Co-operative Society Haveri, from

01.01.2014 to 31.12.2016. 04.02.2014 to 31.10.2016 and 06.04.2015 to 07.11.2016 and if the application is not allowed, then the appellant will be put to untold hardship and the statements are very much necessary for marking in favour of the appellant to prove that amount issued to respondent by the appellant which is legally enforceable and to prove capability of the appellant.

20. It is pertinent to note here that, except above said facts, the appellant/complainant has not stated in the application as to whether the Trial Court has refused to admit the proposed documents which ought to have been admitted or not. The application is also very much silent as to why the complainant could not produce those documents before the Trial Court. The application in-fact vague in nature and not specific as to why the complainant could not produce those documents before the Trial Court.

21. Be that as it may, the documents sought to be produced are the Bank statements issued by the Manager of Canara Bank Haveri, Manager of Bank of India and Manager Suvarna Co-operative Society Haveri, from 01.01.2014 to 31.12.2016. 04.02.2014 to 31.10.2016 and 06.04.2015 to 07.11.2016. Further, the witnesses sought to be summoned are the Managers of the Banks. So, it is crystal clear that the documents sought to be produced and the witnesses sought to be summoned were within the knowledge of appellant/complainant much prior to the proceedings before the Trial Court. In other words, it is to be noted here that the documents sought to be produced and the witnesses sought to be summoned were in the custody and possession of appellant/complainant much prior to the proceedings before the Trial Court. But, the complainant has not produced those documents before the Trial Court and also not summoned those witnesses before the Trial Court and also failed to get the documents marked in his evidence. No explanation as such forthcoming in the application.

22. It is also necessary to note here that, the accused had taken a specific and probable defence to the effect that the complainant has no financial capacity to lend hand loan to the accused.

23. As could be seen from the Trial Court records, that the complainant having conscious about the defence taken by the accused, has already deposed before the Trial Court and also produced documents before the Trial Court. But, the complainant has not produced bank statements before the Trial Court. The matter relates to the year 2018, which is admittedly more than 8 years old case. The judgment was passed on 17.10.2018. The complainant has preferred the appeal before the Hon'ble High Court of Karnataka on 14.11.2018, which has been transferred to this Court on

27.01.2026. This present application being filed before this Court only on 05.05.2026. There is absolutely no explanation in the application as to why it was not filed at the earliest point of time.

24. Be that as it may, the complainant also not stated in the application for non production of such documents before the Trial Court and also not summoning the witnesses before the Trial Court. In the absence of such an explanation, permitting the complainant to adduce additional evidence either oral or documentary does not arise. Therefore, considering the nature of defence taken by the accused before the Trial Court at the earliest point of time, the complainant could have definitely produce those documents before the Court and get it marked in his evidence. But, the complainant has not done so. No explanation as such forthcoming in the application.

25. It is pertinent to note here that, the complainant has not assigned any cogent reasons to permit him to produce additional evidence before this Court. There were ample opportunity to the appellant/complainant to produce those documents before the Trial Court and get it marked in his evidence. P.W.1 was already subjected for cross-examination at length by the Learned counsel for the accused before the Trial Court. Under these circumstances, in the absence of cogent reasons in the application and in the absence of compliance of mandatory provisions of law, the complainant cannot be permitted to produce additional documents and cannot be permitted to adduce the oral evidence before this Court. Therefore, for the reasons discussed above, this Court is of the considered view that the complainant has not made out any sufficient grounds to show that the Trial Court has refused to admit the evidence which ought to have been admitted and also failed to establish that notwithstanding the exercise of due diligence, the proposed documents were not within the knowledge of complainant or could not, after the exercise of due diligence, be produced by him before the Trial Court. Hence, the application is deserves to be dismissed. Hence, I answer point No.1 in the **negative**.

26. **POINT NO. 2** : In view of my findings on point No.1, I proceed to pass the following.

ORDER

The application filed by the appellant/complainant under the provisions of Section 391 R/w Section 311 of Cr.P.C., is hereby dismissed with cost.

(Directly dictated to the Stenographer on computer, typed by him, corrected, signed and then pronounced in the open court on this the ***25th day of July, 2026****.)*

(N.M. Ramesha)
I Addl. District and Sessions Judge,
Haveri.