



**THE COURT OF II ADDL.DISTRICT AND SESSIONS
JUDGE, KODAGU-MADIKERI
SITTING AT VIRAJPET**

Present : Sri. S. NATARAJ., B.A.L., LL.B.,
II Addl.District and Sessions Judge,
Kodagu-Madikeri, Sitting at Virajpet.

DATED THIS THE 30th DAY OF JULY 2026

Cr1.A.No.5069/2025

Appellant : Sri. Nanda Belliappa,
S/o Sri. A. M. Belliappa,
Aged: 64 years,
R/at Vinayaka Curing Works,
Industrial Estate,
Kushalnagar,
Kodagu District.
Shabarikad Estate,
Madapura Village and Post,
Somavarpeta Taluk,
Kodagu District.

(By Smt Najubuddeen K M, Advocate)

V/S

Respondent : B. R. Susheela
(Since dead by her legal heirs)

1(a). P. N. Harishankar Prasad,
S/o Late P. V. Narayana Sharma,
Aged: 39 years,
R/at Palangala Village,
Virajpet Taluk,
Kodagu District.

1(b) Jayashree Khandige,
W/o Narayana Khandige,
Aged: 66 years,
R/at # 1202, Green Heights,
SL Mathais Rord,
Opposite Bharath Petrolim,
Falnir, Mangalore-575001,
Dakshina Kannada.

1(c). Bhagya Shree N,
W/o Jagadish Malnad,
Aged: 54 years,
R/at No.7/13, Hosmane,
5th Main, Near Brigade Milenium,
Puttenahalli,
JP Nagar, 7th Phase,
Bengaluru-560078.

1(d) Umashankar Prasad P. N.,
S/o P. V. Narayana Sharma,
Aged: 51 years,
Karada Post,
Palangala Village,
Virajpet Taluk,
Kodagu District.

(By Sri.Pramod I R., Advocate)

**Order on application filed under Section 391 read
with Section 91 of CrPC.**

The appellant/accused has filed the present application under Section 391 r/w Section 91 of CrPC, praying to summon the branch manager, Union Bank of India, Chikpete Branch to produce the account

statements and transaction details relating to Sri. P.N. Harishankar Prasad for the period from 1996 to 2006 as additional evidence.

2. The respondent has filed a detailed objection opposing the application.

3. The case of the appellant in the application that the cheque amount has been already repaid through various bank transactions and that the substantial payment were made to the complainant and his legal representatives. Sri. P. N. Harishankar Prasad. According to appellant, during trial, he requested the bank to furnish account details of Sri. P. N. Harishankar Prasad, but the bank refused to provide the same without the account holder's consent. Therefore, he filed an application under Section 91 CrPC before the trial Court, which came to be rejected. The revision petition filed against the said order was also dismissed as not maintainable.

4. It is further contended that the documents are essential to prove the payments made by him and that

despite due diligence he could not secure them during trial. Hence additional evidence is required under Section 391 CrPC in the interest of justice.

5. The respondent filed objections that the application is not maintainable. During trial itself the appellant has summoned the Bank Manager of Corporation Bank and now Union Bank of India. The bank manager appeared before the trial Court, produced available records, and specifically stated in his evidence that the old records had been destroyed as per the banking rules. Even thereafter, the applicant again filed another application under Section 91 CrPC, suppressing the earlier proceedings, and therefore, the trial Court rightly rejected the application.

6. It is further contended that the original complainant was Smt. P. R. Susheela and Harishankar Prasad was only her GPO holder and thereafter are legal representatives. His personal bank account has no relevance to the liability under the cheque issued in

favour of Smt. Susheela. The application has been filed only to delay the appeal and pray for dismissal.

7. Heard arguments of both sides.

8. Perused the record, the points would arise for my considerations are as under:

1. *Whether the appellant has made out sufficient grounds to permit additional evidence under Section 391 CrPC by summoning the bank record sought.?*
2. *What order?*

9. My findings on the above points are as follows:-

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

REASONS

10. Section 391 CrPC empowers the appellate court to take additional evidence only when such evidence is necessary for a just decision of the case. The power is discretionary and is not intended to enable a party to fill up omissions or weakness in the evidence already led before the trial court.

11. The defence of the appellant throughout the trial has been that the cheque amount was repaid through bank's transactions. If that was the specific defence, the best evidence available with the appellant was his own bank statement account showing the alleged payments. If the payments were actually made from his bank account, nothing prevented him from producing his own bank statement before the trial court. Those records were always within his knowledge and control.

12. Instead of producing his own bank records, the appellant seeks to summon the personal bank account of Sri. P. N. Harishankar Prasad. The respondent has specifically stated that Harishankar Prasad was only a G. P. A. holder and later the legal representatives of the original complainant are Smt. B. R. Susheela. Therefore, the mere seeking his personal bank account is not enough. Without first producing the applicant's own account statement does not establish that the cheque liability was discharged.

13. The record further disclosed that the bank manager had already been summoned before the trial Court and he appeared and produced the available records and also deposed that the old records had been destroyed as per the banking norms. Therefore, the appellant had already availed the opportunity contemplated in Section 91 CrPC. Seeking another direction for production of very same records. When the bank has already stated that such old records are unavailable, serves no useful purpose.

14. The appellant has also failed to show why his bank account statements which were readily available to him were not produced during trial. No satisfactory explanation has been offered for such omission. Section 391 CrPC cannot be invoke to overcome the consequences of failure to produce evidence which was always within the possession or control of the party.

15. The documents now sought are not shown to be indispensable for deciding the appeal. On the contrary, allowing such an application at the appeal stage would

only result in prolonging the proceedings without any certainty that the requested records are available. In these circumstances, this Court is of the opinion that the appellant has failed to establish that the proposed additional evidence is necessary for the just decision of the appeal as required under Section 391 CrPC. Accordingly, answered point No.1 in the **Negative**.

16. **Point No.2:-** In view of the findings on point No.1, I proceed to pass following:-

ORDER

The application filed by the appellant under Section 391 r/w Section 91 of CrPC is **dismissed**.

For arguments on behalf of appellant main appeal.

(Dictated to the dictaphone, transcribed through AI adalath, and thereafter corrected and pronounced by me in the open Court on this the **30th day of July 2026**).

(S.NATARAJ)

II Addl.District and Sessions Judge,
Kodagu-Madikeri, Sitting at Virajpet