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**IN THE COURT OF THE III ADDL.DISTRICT JUDGE:
MYSURU.**

PRESENT

**Sri. Gururaj Somakkalavar, M.A.,LL.B.,
III ADDL.DISTRICT & SESSIONS JUDGE:
MYSURU.**

CRL.A/230/2025

Dated this the 29th day of January 2026

Appellant: Ramesha
V/s
Respondent: Smt.Bhagya

ORDERS ON APPLICATION FILED U/SEC.391 of Cr.P.C.

The accused has preferred this appeal, challenging the judgment and order of conviction passed by the Trial Court in C.C.64/2023 dated 04.10.2023 on the file of Civil Judge & JMFC, T.Narasipura.

2. It is contended in the application filed U/Sec.391 of Cr.P.C, that, counsel for the appellant had not conducted the case properly. He has not contested the case. Even, cross examination of the complainant had not

been conducted and defence evidence of the appellant had not been conducted before the trial court. Due to non co-operation of his counsel the case was not contested. Hence, the trial court had found guilty of the accused and conviction judgment has been passed. The appellant is uneducated person and he had not knowledge about court proceedings. In spite of having sufficient documents to disprove the case of the complainant, he had received the conviction judgment and some of the documents are recently obtained as such he could not able to produce the same before the trial court. He had not availed any loan from the complainant. The complainant had no financial capacity to pay sum of Rs.6,50,000/-. The respondent is none other than the sister in law of the appellant. During the year 2022 the appellant and the respondent were lived in the same house, at that point of time by cheating the appellant snatched the cheque and forged the appellant's signature and misused the same and filed the frivolous complaint before the trial court. The appellant is ready to produce the above said documents and contest the case properly. Hence, it is just and necessary to permit the appellant to adduce additional evidence by producing documents. If, this application is not allowed the appellant will be put to great hardship and irreparable loss and

justice will suffer. On the other hand, no prejudice will be caused to the respondent. Hence, this application.

3. The counsel for the respondent filed objections stating that the application filed by the appellant is not maintainable either in law or on facts. She denied the averments of the application. She further contended that, the trial court has given sufficient opportunity to the appellant to take steps for conducting the examination of himself, cross examination of respondent, before passing judgment. But, the appellant has not utilized the same and he has come up with application with false set of claim. The appellant has not given details of the documents, which he is going to relay upon in this appeal. The appellant has filed this application just to drag on the proceedings and also to harass the respondent. She further contended that if the application is allowed she will be put to irreparable injury and great prejudice will be caused to her and if the application is rejected no prejudice or injury will be caused to the appellant. Hence, prayed to reject the application.

4. Having heard the appellant and respondent and upon perusal of the records, the only point that arise for my consideration is:

1. Whether the appellant has made out grounds to allow the application?
2. What Order?
5. My findings to the aforesaid points is:

Point No.1 In the **Negative**.

Point No.2 As per the final order for the following:

REASONS

Point No.1

6. The appellant filed this application sought to lead additional evidence by producing documents. It is contended that, the appellant had not availed any loan from the respondent. Further, the respondent has no financial capacity. The appellant herein due to non co-operation of his counsel the case was not contested and not able to lead evidence. Some of the documents are recently obtained as such he could not able to produce the same before the trial court. Hence, the appellant intended to lead additional evidence by producing documents.

7. The appellant herein has challenged judgment in CC No.64/2023 dated 04.10.2023 on the file of Civil Judge and JMFC, T.Narasipura, wherein the appellant/accused is convicted under Sec.138 of N.I.Act. The appellant/accused

though appeared in the case, but has not contested the case filed by the complainant. Now, the appellant alleges that, due to non co-operation of the counsel he could not able to contest the case and not able to lead evidence inspite of having sufficient evidence on his behalf. It is urged by the appellant that, there is no transaction between the complainant and appellant/accused herein. The present respondent is the sister in law of the appellant i.e., elder sister of wife of appellant. They lived in a same house that point of time cheating the appellant the cheque was taken and forged the signature of the appellant and misused the same. It is argued by the counsel for the appellant that, there is dispute between the complainant/ respondent and wife of appellant, who is none other than the sister of respondent. The wife of the appellant has obtained job on compassionate ground that has led to dispute. In that dispute the appellant is no where connected has been targeted and his cheque was misused and filed the false case.

It is to be noted here that, along with the application the appellant has produced documents, which includes the joint account of wife of appellant and complainant and the complaints filed by the wife of appellant against the

respondent herein and other documents, which are complaints to SBI bank and the Deputy Commissioner. These documents indicates the dispute between the wife of appellant and complainant. Now, the appellant herein is intended to file these documents as additional evidence under Sec.391 of Cr.P.C.

8. It is pertinent to note that, the present dispute between the complainant and appellant is in respect of the dishonour of the cheque. It is alleged that, accused committed offence under Sec.138 of N.I.Act. The grounds urged in the appeal that, the appellant/accused has not been given opportunity to contest the case filed by the complainant. Here, the documents which are intended to be produce as additional evidence are the dispute between the wife of appellant and complainant. These documents does not indicates the connection between the present dispute and dispute between the wife of appellant and complainant/respondent. Apart from the dispute between the wife of appellant and the complainant/respondent. There are other factors to be appreciated in the present nature of the case. It is not right to discuss the merits of the case while dealing with the present application. But, the documents which are produced as additional evidence are not touching upon the present subject matter of the

appeal. Hence, this court is of the view that, the documents are not been taken as additional evidence.

9. There is no strong and sufficient grounds that the adducing additional evidence at the belated stage will satisfy the ingredients of Sec.391 of Cr.P.C. There is sufficient material on record for adjudication of the present appeal.

10. Now, in the present appeal, the accused has filed application U/Sec.391 of Cr.P.C for adducing evidence by producing documents. The moot point has to be taken note is that the accused after lapse of year has filed the present application to adduce additional evidence, to substantiate his case. It is also relevant to note that, the proceedings is the summery proceedings and the complainant has to establish the legal liability by adducing evidence. The accused has only to probabalise his case and create doubt in the case of the prosecution i.e., complainant. The accused has to rebut the case of the complainant and presumption. But here, the accused seeks to adduce additional evidence. U/Sec.391 of Cr.P.C, if there is a necessity to the Appellate Court to do the substantial justice, the power under Sec.391 can be revoked. The present case is not one of the case as no

purpose will be served if the additional evidence are taken into account and will have bearing on the adjudication of the present appeal.

11. Here, in this appeal without dwelling into the merits of the case only restricted to the application filed under Sec.391 of Cr.P.C, it is has to be observed that whether the application is necessary to be allowed. The reasons assigned in the application are not satisfactory and sufficient to allow the application, it is here the spirit and intention of the legislature U/sec.391 of Cr.P.C is to be understand. To get the proper perception of the intention of sec.391 of Cr.P.C. it is necessary to observe to principles laid down by the honorable High Court of Bombay in **Criminal Writ Petition No.653/2016, dtd:19.12.2017 in Imran Amanulla Pathan vs Sayyed Mulayam Yunus.**

“18) The Appellate Court allowed the said application on the application of the respondent and more particularly on the basis of the observations made by the Trial Court while convicting the appellant. Thus, respondent/appellant intends to controvert the observation made by the Trial Court while convicting the respondent by adducing the purported evidence. The application was not within the spirit and scope of Section 391 of the Cr.P.C. The accused did not not enter into witness box nor she intended to examine any

witness after her statement under section 313 of the Cr.P.C. 19) In the case of Ashok Vs. State of Sikkim 2011(4) SCC 403, the Apex Court has held that, the provision of Section 391 of the Cr.P.C. cannot be pressed into service in order to fill up the lacuna in the prosecution case. The Appellate Court, however, in paragraph 12 of the impugned order has observed that, the Trial Court in paragraph 15 has considered examination of the witness is in support of her defence and, therefore, the appellant/accused wants to examine those witnesses, in support of her case. 20) In the decision of Ajay Kumar Garg Vs.Gaurav and anr. In Criminal appeal No.719/2009, the Supreme Court has observed that, 'a bare reading of Section 391 of Cr.P.C. makes it clear that the Section invests (15) Cri WP 653-16 the Appellate Court with the power to record additional evidence, provided it is satisfied, for the reasons to be recorded, that additional evidence is necessary. Since Section 391 of Code is an exception to the general rule that an appeal should be decided on evidence which was before trial Court, power under the Section has to be exercised with caution and circumspection so as to meet the ends of justice and not as a matter of course.

21) In Rambhau and Anr. Vs. State of Maharashtra, 2001 Cri LJ 2343, the Supreme Court has held that, the object of Section 391 is not filling lacuna, but to subserve the ends of justice. An admission of additional evidence should not operate in a manner prejudicial to the prosecution or the defence. Though wide discretion is conferred by the Court, the same

has been exercised judicially and the legislature had put the safety valve by requiring recording of reasons is a condition precedent for exercise of power under Section 391 of the Code and an order bereft of reasons would tantamount to non-application of mind, rendering the exercise of power under the Section, bad in law.”

12. By the observation of the Honorable High Court of Bombay it is clear that, the Sec.391 of Cr.P.C. is an exception to the general rule. The appeal should be decided on evidence which was before trial court. The power U/sec.391 of Cr.P.C. has to be exercised with caution and circumspection to meet the ends of justice. The exercise of the power U/sec.391 of Cr.P.C. is to ascertain the truth lying beneath that to reach the ends of justice if there is any necessity for additional evidence this provision will be invoked and U/sec.391 of Cr.P.C the appellate court has a discretion and if the court satisfies that the additional evidence is necessary to come to a proper conclusion in the case before it the court can exercise the power. As stated above the powers U/sec.391 of Cr.P.C. are exception to general rule and cannot be invoked for unwarranted circumstances and that too if the court satisfies that such additional evidence is necessary under those circumstances the provision will be invoked. In this present case the adducing evidence of witnesses of the

accused at this belated stage will not in any way help to the present case for adjudication. The provisions cannot be invoked at the whims of the appellant, there must be a concrete and sufficient reason which causes great injustice to the party concerned. Under these facts and circumstances, it can be said that the appellant has not made out any grounds to allow the application. Consequently, the application is deserves to be dismissed. Accordingly, I answer the above point in **Negative**.

Point No.2:

13. In the result I proceed to pass the following;

ORDER

The application filed by the appellant
U/Sec.391 of Cr.P.C., is hereby
DISMISSED.

[Dictated to the Stenographer on computer, corrected and then pronounced by me in the Open Court, this the **29th day of January, 2026**]

[Gururaj Somakkalavar]
III Additional Sessions Judge,
Mysuru.