

IN THE COURT OF PRINCIPAL SESSIONS JUDGE, CHENNAI

Present : Thiru.S.Karthikeyan, M.A., M.L., M.Sc., PGDCFS., P.G.D.D.F.,

Principal Sessions Judge

Thursday, the 8th day of January, 2026

Crl.MP. No. 2 / 2025

in

Crl.A.No. 650 / 2024

Against

S.T.C.No. 11941/2023

S. Santhosh Kumar,

... Petitioner/ Appellant /Accused

-Vs-

V .Poornachandran,

... Respondent/Respondent/
complainant

This petition came up before this court on today for final hearing in the presence of M/s.N.Beulah John Selvaraj, J. Winny, A.Dhanalakshmi, J. Joseph Stalin, the counsel for the petitioner and M/s. T.Suresh, V.K. Kumar, T.Padma Shalini, V.Rajeshwari, counsel for the respondent and upon hearing both side and upon perusing the case-records and having stood over for consideration till this date, this court delivered the following :-

ORDER

1. This petition is filed by the petitioner seeking for permission to adduce additional evidence by filing the documents and mark them as exhibits.
2. The learned counsel for the petitioner submitted that, the petitioner /appellant was

convicted for the offence punishable u/s. 138 of NI Act and sentenced to undergo 6 months Simple Imprisonment and further directed to pay a sum of Rs. 50,000/- as compensation within one month and in default of payment of compensation, the Accused shall undergo a further period of two months of simple imprisonment.

3. Aggrieved by the same, the petitioner/Appellant is before this court with the present Appeal. The learned counsel for the petitioner/appellant submitted that certain important facts were not brought to the court knowledge by the complainant deliberately. On service of summons, the appellant appeared before the trial court. On appearance, on 06.02.2025, the learned Magistrate questioned him about the cheque amount which the respondent admitted that he would pay the said cheque amount but he needs some more time. Therefore, the case was referred to Lok adalat for settlement. The petitioner/appellant did not aware of the procedure and was not represented by the counsel before the trial court.

4. The learned counsel for the petitioner/appellant further submitted that the petitioner and the respondent did the joint business as partners, in selling ear phones through an online platform. The said business were commenced in February 2020. There was an oral contract to share the profit and loss. The profit to the tune of Rs. 3,25,000/- were shared with the respondent. After that, the business suffered loss due to Covid-19 Lock down. The respondent father came to the petitioner house and obtained cheques and stamp papers from him. The said Pronote and cheque for Rs. 50,000/- were misused for the purpose of this case.

5. The learned counsel for the petitioner/appellant further submitted that a suit in OS.No. 2283/2024 on the file of XIII Assistant City Civil Court, Chennai was filed by the respondent for recovery of sum of Rs.2,75,000/- and 18% per annum. The complainant demanded the entire amount of Rs.2,75,000/- instead of cheque amount of Rs.50,000/- in the Lok adalat. Hence, the settlement before the Lok adalat failed and the matter was remitted back to court on 15.04.2024.

6. On 15.04.2024, the petitioner/appellant paid a sum of Rs.10,000/- to the respondent through Gpay and reported before the court. The learned Judge asked him to pay cheque amount as early as possible and adjourned the matter on 15.04.2024. On 15.04.2024, he sought adjournment as he did not possess the fund therefore the matter was adjourned to 30.05.2024. On 30.05.2024, he paid a sum of Rs. 10,000/- to the complainant by through Gpay transactions and reported the same before the court.

7. Thereafter, the matter was posted to 18.06.2024. On 18.06.2024 and 04.07.2024, the petitioner was unable to pay due to non availability of funds. On 11.07.2024, he paid a sum of Rs. 15,000/- through UPI transaction and the matter was adjourned to 25.07.2024. On 25.07.2024, he paid Rs.15,000/- to the complainant and reported to the court that he paid the entire cheque amount. The learned Judge called the complainant and asked whether the amount was settled or not. The complainant counsel represented that the amount was not settled. Therefore, the learned Judge has convicted the appellant. The learned counsel for the petitioner submitted that, despite making full payment, the petitioner/appellant was convicted and the payment was

suppressed by the complainant.

8. Therefore, he wants to file, the complaint in STC No. 11941/2023 order in STC No. 11941/2023, the Plaint in OS No. 2283/2024 and payment receipts as additional documents in this court. Hence, prays for leave of this court to receive those documents.

9. Per contra, the learned counsel for the respondent submitted that the petitioner /appellant has suppressed the material facts before this court that he has known the suspension of sentence passed by the trial court. The suspension of sentence filed before this court was dismissed by this court, against which, he has filed CrI.OP.24398/2024 before the Hon'ble High Court, Madras, and with condition the said criminal OP was disposed of. Again the petitioner has not complied with the said condition. Therefore, this court directed the trial court to secure the Accused herein. Only thereafter, the petitioner/appellant has come up before this court to face this proceedings.

10. The complaint filed by the respondent ended in conviction, the alleged money seems to be issued by the complainant irrelevant inadvertent and they have not produced and relied upon during the course of trial. The claim of the petitioner that he paid to the complainant through UPI transaction is utter false statement. The complainant is not liable for any prior arrangement with his father and no such demands was raised during the transaction. Therefore, it cannot be taken at the

appellate stage. The learned counsel for the respondent contended that after the conviction, the appellant has come up with the present application seeing for reopening of the Accused side evidence by producing his sufficient documents. Therefore, the learned counsel for the respondent prays for dismissal of the above said application.

11. This court has given its thoughtful consideration to the rival submissions put forth by either side. On careful perusal of records, the present application has been filed by the petitioner/appellant herein to let in additional evidence during appellate stage. The power of this court admitting additional evidence at the appellate stage is well stated in the decision of the Hon'ble Apex Court in ***Brig Sukhjeet Singh (retd) Vs. State of Utterpradesh***, as follows:-

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.

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.

12. From the above decision it is clear that, the power of this court to allow additional evidence is wider and only fetter is that the additional evidence should be necessary for the purpose of the disposal of this case. According to the learned counsel for the petitioner, pending trial, he has paid the cheque amount by way of UPI transactions which he wants to produce at this stage. Though, the learned counsel for the respondent contended that, the defence has not taken before the trial court and he cannot be let in evidence at the appellate stage, it has brought to the notice of this court that the Accused/appellant has not extended with legal representation, therefore, this court is inclined to allow this petition to let in evidence on the side of the appellant. This court is of the considered view that the parties to the lis to be given to full and fair opportunities to let in evidence to substantiate their respective case.

13. In the result, this application is allowed and the learned Trial court is directed to record additional evidence and forward to this court by certifying the same within two months from the date of receipt of copy of this order.

14. Accordingly, this petition is allowed.

Dictated to stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this the 8th day of January, 2026

**Principal Sessions Judge,
Chennai.**