

**IN THE COURT OF ADDITIONAL DISTRICT AND SESSIONS JUDGE,  
DINDIGUL.**

**Present : Thiru.Swarnam J.Rajagopalan, B.A.B.L.,(Hons.)**

**Additional District and Sessions Judge, Dindigul.**

**Monday, dated this the 30<sup>th</sup> day of March 2026.**

**Crl.M.P.No. 3191/2024**

**in**

**Crl.A.No. 48/2024**

A. James, Age 51/2024, S/o. Augustine, 32, Vincent Illam, Kalikkampatti Division,  
A.Vellodu, Dindigul East Taluk, Dindigul District.

Now residing at, Assistant, Gandhigram University, Gandhigram, Athoor Taluk Dindigul.

... Petitioner/Accused/Appellant

..Vs..

1. S. Ramachandran, Age 70/2024, S/o.Chinnappa Gounder, 502/2, K.S.M.S.Nagar, Anna  
Nagar, Gandhigram Post, Athoor Taluk, Dindigul District.

2. The Public Prosecutor, Dindigul ... Respondents/Complainants/Petitioners

This petition came up for final hearing on 23.03.2026 in the presence of  
Thiru.D.Abraham Ilayaraja, learned Counsel appeared on behalf of the accused and  
Thiru.K.Murugan, learned Counsel appeared on behalf of the respondents, after hearing the  
arguments of both sides, upon perusal of relevant records, today this Court passed the  
following,

**ORDER**

This Criminal Miscellaneous Petition has been filed by the appellant/accused  
under Section 391 of the Code of Criminal Procedure seeking permission to  
adduce additional evidence by examining the departmental head of  
Gandhigram Rural Institute (Deemed to be University), Gandhigramam, to

establish that on 06.01.2020, the alleged date of issuance of cheque, the appellant was on duty in his department and had not visited the complainant's residence as alleged.

**1. The case of the petitioner is as follows:**

- The appellant stood trial before the learned Judicial Magistrate in C.C. No. 209 of 2020 for an offence under Section 138 of the Negotiable Instruments Act and, upon conclusion of trial, came to be convicted. Aggrieved by the said conviction, the present Criminal Appeal No. 48 of 2024 has been preferred and during its pendency, the present petition has been filed.
2. The learned counsel for the appellant would submit that the cheque is alleged to have been issued on 06.01.2020, whereas the appellant was admittedly working in his department at Gandhigram University on that date and therefore, the examination of the departmental head is necessary to substantiate the said defence and to effectively rebut the complainant's case. The same was opposed on the ground that the accused was given sufficient opportunity to defend the case before the trial court and not even a suggestion was made to the complainant on the aspects sought to be agitated herein and then he prayed that the petition is an attempt to delay and thus be dismissed.
  3. This Court has carefully considered the rival submissions made and perused the materials available on record.
  4. At the outset, it is to be noted that the power under Section 391 Cr.P.C. is an enabling provision, to be exercised sparingly and only in cases where the appellate court finds that the additional evidence is necessary for a just decision of the case and that denial of such opportunity would result in miscarriage of justice.

5. In the present case, it is not in dispute that the appellant had full opportunity during the course of trial to put forth his defence. The prosecution case, including the date of issuance of cheque, was well within the knowledge of the appellant at the time of trial.
6. However, a perusal of the evidence would clearly reveal that no suggestion whatsoever was put to the complainant or other prosecution witnesses during cross-examination that the appellant was on duty at Gandhigram University on 06.01.2020 or that he had not visited the complainant's residence on the said date.
7. The absence of such foundational suggestion during trial assumes significance, as it indicates that the defence now sought to be introduced was never part of the original defence strategy of the accused.
8. In a prosecution under Section 138 of the Negotiable Instruments Act, once execution of the cheque is admitted or proved, a statutory presumption arises in favour of the complainant and the burden lies on the accused to rebut the same on a preponderance of probabilities.
9. The accused is entitled to discharge such burden either by eliciting favourable answers in cross-examination or by adducing independent defence evidence. In the present case, the appellant has failed to effectively utilise either of these opportunities.
10. The appellant has not offered any plausible or acceptable explanation as to why the departmental head was not examined during trial or why such a defence was not projected at the appropriate stage before the learned trial Magistrate. The present

attempt to introduce such evidence at the appellate stage, without any foundation having been laid earlier, clearly indicates lack of due diligence on the part of the appellant.

11. It is well settled that the provision under Section 391 Cr.P.C. cannot be invoked to fill up lacunae in the defence or to patch up the weak points in the case after an adverse judgment has been rendered.
12. The timing of the petition, namely after conviction and during pendency of appeal, coupled with the absence of any prior suggestion or evidence, leads this Court to the inevitable conclusion that the present petition is an afterthought.
13. Further, this Court is of the view that the proposed evidence is not essential for the just decision of the case, as the core issue in a prosecution under Section 138 of the Negotiable Instruments Act revolves around the existence of legally enforceable debt and issuance of cheque, and not merely the physical presence of the accused at a particular place on a particular day.
14. Therefore, even on merits, the additional evidence sought to be introduced does not go to the root of the matter so as to warrant exercise of discretion under Section 391 Cr.P.C.
15. In view of the above discussion, this Court finds that the appellant had sufficient opportunity before the trial court, failed to exercise due diligence, and is now attempting to introduce a new defence by way of an afterthought, which cannot be permitted.

Accordingly, this Court holds that no ground is made out to allow the present petition.

**Result:**

In the result, this Criminal Miscellaneous Petition filed under Section 391 Cr.P.C. is dismissed.

Dictated by me, and typed by my Stenographer in computer, corrected and pronounced by me in the Open Court on this the 30<sup>th</sup> day of March 2026.

**Addl. Dist. & Sessions Judge,**  
Dindigul.