



2026:CGHC:1235



2026:CGHC:1235

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRMP No. 2871 of 2023

1 - Gourishankar Agrawal S/o Late Teluram Agrawal, Aged About 59 Years Sector -02/17, Avanti Vihar, Ps Telibandha, District Raipur Chhattisgarh.

... **Petitioner(s)**

versus

1 - Anil Khubchandani S/o Late Girdharilal Khubchandani, Aged About 42 Years R/o Gt Complex, Telibandha, District Raipur Chhattisgarh.

2 - State Of Chhattisgarh Through Dm, Raipur

... **Respondent(s)**

For Petitioner(s) : Mr. Manish Thakur, Advocate.

For Respondent No.1 : Mr. Vinay Nagdev, Advocate.

For State/Respondent No. 2: Mr. Sumit Singh, Dy. Advocate General.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J.

Order on Board

08/01/2026

1. The petitioner has filed the instant Criminal Miscellaneous Petition under Section 482 of the Code of Criminal Procedure, 1973 (in



short "Cr.P.C."), against the order dated 25-01-2023, passed by the learned First Additional Sessions Judge, Raipur, in Criminal Appeal No. 62/2021, whereby the application under Section 391 of the Cr.P.C. filed by the petitioner has been rejected.

2. The subject matter in brief is that the petitioner was an accused in the complaint case filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 (in short "N.I. Act"), before the learned Judicial Magistrate First Class, Raipur. The allegation in the complaint case was that the complainant had supplied Cement on credit, between 23-07-2012 and 14-11-2012, amounting to Rs. 9,53,800/-, to the present petitioner/accused and another co-accused, Sonand Aggrawal (acquitted). In lieu of its payment, a cheque No. 275514, dated 26-08-2012, amounting to Rs. 9,00,000/- was issued to him, which was dishonoured by the payee bank on 15-11-2012, on the ground of "stop payment". Thereafter, after due process of legal demand notice, a complaint case under Section 138 of the N.I. Act was filed before the learned trial Court.
3. The learned trial Court explained details of the offence, and after recording evidence of the parties, vide its judgment dated 05-03-2021, convicted the petitioner/accused for the offence under Section 138 of the N.I. Act and sentenced him for S.I. for two years and compensation of Rs. 14,00,000/-, which is to be payable within 30 days, failing which he shall further undergo S.I. for six months. There were two accused persons in the case, and



the co-accused Sonand Aggrawal has been acquitted by the learned trial Court.

4. The judgment of conviction and sentence dated 05-03-2021 is challenged by the petitioner/accused before the learned First Additional Sessions Judge, Raipur, in Criminal Appeal No. 62/2021. In the Criminal Appeal, the petitioner has filed an application under Section 391 of the Cr.P.C. with the prayer that he may be provided an opportunity to the appellant/accused:-
 - i. To cross examine P.W. 1 by putting some direct left out points.
 - ii. Some suggestion as regard to sale of cement to accused persons.
 - iii. Mischief or alteration made in documents filed in court.
 - iv. To examine both accused person as defence witnesses as regard to sale of cement to accused by complainant worth Rs. 9,53,800/- and giving the alleged cheque to complainant on 26-08-2012.
 - v. To seek a clarification on confusing answer of P.W. 1 and,
 - vi. To produce and prove the sales Tax registration certificate granted to "cement associate" Raipur to prove accused Gourishankar Agrawal is not the owner of this business organization.
5. The said application of the petitioner/accused filed before the learned appellate Court was rejected on 25-01-2023, which is under challenge in the present petition.
6. Learned counsel for the petitioner would submit that the submission of additional evidence is necessary not only for just



decision of the case but also to protect the right of fair and impartial trial of the accused. The complainant has suppressed various documents, and the accused could not cross-examine the witnesses properly. When he came into knowledge of the documents, he filed the application under Section 391 of the Cr.P.C. He would further submit that the complainant has not filed any documents with respect to the ownership of the shop of Muskan Traders and there are no documents of registration of the firm. It is also submitted by him that some vital points are left out by the counsel of the petitioner/accused during the cross-examination of the complainant, which need to be asked from them for the just decision of the case. No proper opportunity was provided to the petitioner/accused to produce his evidence and to examine himself as a witness in his defence. Therefore, the application of the petitioner/accused ought to be allowed by the learned appellate Court, but the same has been dismissed on the ground that the application under Section 391 of the Cr.P.C. cannot be allowed to fulfil the lacunae, which is erroneous, and the same is liable to be set aside.

7. Per contra, learned counsel appearing for the Respondent supported the impugned order and submits that sufficient opportunity was provided to the petitioner/accusee in his defence to cross-examine the complainant witnesses. The complainant has been cross-examined thrice, and a detailed cross-examination has been done. From the very beginning, the



petitioner/accused was in knowledge of his case and defence. He has taken all his defence during the trial of the case, and the proceedings of the case were pending from 2013, and were decided on 05-03-2021. In such a long period of the trial, it cannot be said that the accused did not have knowledge of his case or evidence in his favour, or that he was prevented from producing such evidence during the trial. He would also submit that the application of Section 391 of Cr.P.C. cannot be allowed to fulfil the lacunae. It is also submitted that after about one and a half years of filing the appeal, the petitioner/accused filed the application, only to delay the proceeding. Sufficient opportunity was provided to him during the trial, and his application was rightly dismissed by the appellate Court, which needs no interference. In support of his submission, he would rely upon the judgment of the Hon'ble Supreme Court in the case of **"AjitSinh Chehuji Rathod vs. State of Gujarat and Another"**, 2024 (4) SCC 453, and **"H. N. Jagadeesh vs. R. Rajeshwari"**, 2019 (16) SCC 730.

8. I have heard learned counsel for the parties and perused the material annexed with the petition.
9. Section 391 (1) of the Cr.P.C. specifically provides that if the appellate Court is convinced that additional evidence is necessary to be taken, then it shall either take the evidence itself or direct the Magistrate to record the evidence. The power must be exercised sparingly and only in suitable cases.



10. It is not disputed by the parties that the complaint case under Section 138 of the Negotiable Instruments Act, 1881, against the petitioner/accused has been filed before the learned trial Court on 03-01-2013. During the trial, the complainant filed his examination in chief in the form of an affidavit under Section 145 of the N.I. Act, and initially examined on 23-12-2020. He was cross-examined by the counsel of the petitioner/accused on 20-01-2021. The complainant was again cross-examined on 25-01-2021 and was cross-examined at length by the defence counsel. He was again cross-examined on 30-01-2021, and on that day, his cross-examination was completed. His other witness, P.W. 2, Manoj Kumar Sethi, was examined and cross-examined on 29-12-2020. It is also not disputed by the parties that on 11-02-2021, the defence witness Ambika Sharan Singh (D.W. 1) was examined and cross-examined. On 27-02-2021, the D.W. 2 Ku. Manisha Dubey has been examined and cross-examined. Thereafter, the judgment was passed on 05-03-2021 by the learned trial Court, after hearing the parties.
11. It is very difficult to consider that the petitioner/accused was prevented by any reason from putting up his defence before the learned trial Court. he cross-examined the complainant and his witness in detail and produced his witnesses also. The complaint case was pending from 2013 to 2021. From the very beginning, he must know about the transaction between them and the evidence available in his possession in support of his defence. He



cross-examined the complainant in detail on three occasions after a gap of some days. It cannot be expected that certain questions were left out to put before him. After such a lengthy and detailed cross-examination of the complainant, that too in an appellate stage, the application of Section 391 of Cr.P.C. has been filed by the petitioner/accused without disclosing as to what questions were left out to put before him. The suggestions with regard to the sale of cement were already asked during the cross-examination of the complainant and his witness, and it was the basic question of the transaction between the parties that they had already asked. The petitioner/accused is unable to satisfy this Court that the grounds taken in the application for additional evidence are available to him to allow the application. He was provided sufficient opportunity to lead his defence witness, and he examined his two defence witnesses, Ambika Sharan Singh (D.W. 1) and Ku. Manisha Dubey (D.W. 2). Despite having the opportunity to produce himself as the defence witness, he had not chosen to examine himself, and has not availed the opportunity, and now he cannot say that he may be permitted to examine himself by invoking the powers under Section 391 of the Cr.P.C.

12. In the case of **“Ajitsinh Chehuji Rathod”** (supra), the Hon’ble Supreme Court has held in para 17 that :-

“17. The appellant had sought for comparison of the signature as appearing on the cheque through the handwriting expert by filing an application before the trial court which rejected the same vide order dated



13-6-2019. The said order was never challenged and had thus attained finality.

13. In the case of “**H. N. Jagadeesh**” (supra), it has been held by the Hon’ble Supreme Court that:-

“6. We are unable to agree with this approach of the High Court, in the facts of this case, which is inappropriate in law. The service of the statutory notice calling upon the drawer of the cheque (after it has been disowned) to pay the amount of cheque is a necessary precondition for filing of the complaint under Section 138 of the Act. Therefore, it was incumbent upon the respondent to produce the said statutory notice on record to prove the same as well. In this case, this document was not even filed by the respondent along with the complaint, and the question of proving the same was, therefore, a far cry. In a case like this, we fail to understand as to how the aforesaid omission on the part of the respondent in not prosecuting the complaint properly could be ignored and another chance could have been given to the respondent to prove the case by producing further evidence. It clearly amount to giving an opportunity to b the respondent to fill up the lacuna.”

14. Virtually, the petitioner/accused sought recall of the witnesses for their re-cross-examination, which is in the garb of Section 311 of the Cr.P.C. It is the settled law that the witness cannot be recalled for their re-cross-examination to fulfil the lacunae, particularly when sufficient opportunity for their cross-examination was provided, and they have been cross-examined by the opposite party in detail. The appellate court has rejected the application on



the ground that change of counsel cannot be a ground to recall the witnesses for their re-cross-examination, and the powers of Section 391 Cr.P.C. cannot be invoked to fulfil the lacunae. No cogent or satisfactory reason has been assigned by him for admitting the additional evidence.

15. Upon consideration of the record, this Court finds that the petitioner was afforded full and adequate opportunity during trial to cross-examine the complainant and his witnesses, and to adduce defence evidence. The complainant (P.W.1) was cross-examined on three separate occasions, and the defence examined two witnesses. The proceedings remained pending for a substantial period from 2013 to 2021, during which the petitioner was fully aware of the nature of the transaction and the evidence required to substantiate his defence. The application under Section 391 of the Code of Criminal Procedure, 1973 was filed at the appellate stage without specifying any concrete or compelling grounds necessitating additional evidence. The power under Section 391 Cr.P.C. is to be exercised sparingly and not to enable a party to fill up lacunae or to seek a re-trial under the guise of additional evidence, particularly when sufficient opportunity was already granted during trial.
16. In light of the settled legal position laid down by the Hon'ble Supreme Court in **Ajitsinh Chehuji Rathod** (supra) and **H. N. Jagadeesh** (supra), this Court is satisfied that the appellate Court committed no jurisdictional error in rejecting the petitioner's



application. The attempt to recall witnesses or adduce further evidence appears to be an endeavour to cure perceived deficiencies in defence strategy rather than to advance the cause of justice. Consequently, the impugned order does not warrant interference under Section 482 Cr.P.C., and the petition is devoid of merit and hereby **dismissed**.

17. Interim order, if any, stands vacated.
18. A copy of this order shall be forwarded to the concerned appellate Court.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Alok