

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 2820 of 2024

Janardan Mishra, aged about 73 years, son of Late K.N. Mishra,
Resident of C/o Kajal Dutta, New Kitadih Colony, Near New Post
Office, P.O. -Kitadih, P.S. -Parsudih, Town -Jamshedpur, District -
East Singhbhum. Petitioner

Versus

1. The State of Jharkhand;
2. Indranath Ho, son of Late Nandu Ho, Resident of Village
Kalchakar, P.O. and P.S. -Chakradharpur, District -West
Singhbhum.

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner	: Mr. Rohan Mazumdar, Advocate
For the State	: Mrs. Vandana Bharti, Addl. P.P.
For the O.P. No.2	: Mr. Madhav Prasad, Advocate
	: Mr. Manoj Kr. Choubey, Advocate

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By the Court:-

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the
jurisdiction of this Court under Section 528 of the Bharatiya Nagarik
Suraksha Sanhita, 2023 with the prayer to quash the order dated
14.08.2024 passed by the learned Sessions Judge, East Singhbhum at
Jamshedpur in Criminal Appeal No. 93 of 2024 arising out of
Complaint Case No. 3161 of 2019 whereby and where under the
learned Sessions Judge, East Singhbhum at Jamshedpur has been
pleased to dispose of the petition filed under Section 391 Cr.P.C.
with the condition that the relevancy and admissibility of the

documents filed by the respondent no.2 shall be adjudicated at the time of final disposal of the appeal.

3. The brief fact of the case is that the petitioner is the respondent no.2 of Criminal Appeal No. 93 of 2024. On 06.08.2024, the petitioner being the respondent no.2 of the said Criminal Appeal No. 93 of 2024 filed a petition with the prayer to get the certificate under Section 65B of the Evidence Act in respect of the track report -Ext -5 as additional evidence. It was contended by the petitioner before the learned Sessions Judge that the petitioner herein who was the complainant of the Complaint Case No. 3161 of 2019 of the court of learned Judicial Magistrate, Jamshedpur filed the track report downloaded from the official site of India Post, in respect of postal receipt, the consignment number of which has been mentioned in the petition and the same was marked Ext -5. The print out of the said track report was taken out by the son of the complainant from his personal computer and printer, however, inadvertently the required certificate under Section 65B of the Evidence Act could not be filed and he prayed that in the interest of justice, the petitioner needs to be allowed to get the said certificate under Section 65B of the Evidence Act proved, in respect of the track report -Ext. -5 but the learned Sessions Judge instead of allowing or rejecting the said prayer, disposed of the said petition with the condition that the relevancy and admissibility of the document filed by the respondent no.2 shall be adjudicated at the time of final disposal of the appeal.

4. It is submitted by the learned counsel for the petitioner relying upon the Judgment of the Hon'ble Supreme Court of India in the

case of **Asim @ Mummun @ Asif Abdulkarim Solanki Vs. State of Gujarat**, reported in **(2021) 16 SCC 459**, para -4 of which reads as under:-

“4. Section 391 CrPC does not impose any restriction as to when the application filed for adducing additional evidence should be heard by the High Court. In fact, we are of the opinion that it is desirable that an application filed under Section 391 should be heard immediately after it is filed without waiting for the appeal to be finally heard.” (Emphasis supplied)

And submits that therein the Hon’ble Supreme Court of India has expressed the opinion that it is desirable that an application under Section 391 of the Cr.P.C. should be heard immediately after it is filed without waiting for the appeal to be finally heard.

5. The learned counsel for the petitioner in this respect also relied upon the Judgment of this Court passed in the case of **Sunil Kumar Vs. The State of Jharkhand**, reported in **2025:JHHC:26794** and submits that this Court in that case relying upon the Judgment of the Hon’ble Supreme Court of India in the case of **Asim @ Mummun @ Asif Abdulkarim Solanki Vs. State of Gujarat**, (Supra) quashed and set aside the order in that case passed by the learned Additional Sessions Judge -IX, Deoghar whereby the learned Additional Sessions Judge instead of disposing of the application under Section 391 Cr.P.C., has passed the order that the said petition filed under 391 Cr.P.C. will be considered during final hearing of the appeal. It is next submitted that since the prayer of the petitioner is specific, the learned Sessions Judge has committed a grave illegality by not allowing the same. Hence, it is submitted that the prayer as prayed

for by the petitioner in this criminal miscellaneous petition be allowed.

6. The learned Addl. P.P. and the learned counsel for the opposite party no.2 on the other hand vehemently oppose the prayer as prayed for by the petitioner in this criminal miscellaneous petition.
7. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that as has been observed by the Hon'ble Supreme Court of India in the case of **Asim @ Mummun @ Asif Abdulkarim Solanki Vs. State of Gujarat** (supra) it is desirable that an application filed under Section 391 Cr.P.C. should be heard immediately after it is filed without waiting for the appeal to be finally heard.
8. Now coming to the facts of the case, since the 391 Cr.P.C. application was filed in this case with the specific purpose of proving the certificate required under Section 65B of the Evidence Act. So, certainly the learned Sessions Judge, Jamshedpur has committed a grave illegality by deferring with the decision upon the same and still disposing of the petition under Section 391 Cr.P.C.
9. Under such circumstances, this Court is of the considered view that the impugned order dated 14.08.2024 passed by the learned Sessions Judge, East Singhbhum at Jamshedpur in Criminal Appeal No. 93 of 2024 arising out of Complaint Case No. 3161 of 2019 being not sustainable in law is liable to be quashed and set aside.
10. Accordingly, the impugned order dated 14.08.2024 passed by the learned Sessions Judge, East Singhbhum at Jamshedpur in Criminal

Appeal No. 93 of 2024 arising out of Complaint Case No. 3161 of 2019 is quashed and set aside and the petition dated 06.08.2024 filed by the petitioner in Criminal Appeal No. 93 of 2024 of the Court of learned Sessions Judge, East Singhbhum at Jamshedpur is restored to its file and the learned Sessions Judge, East Singhbhum at Jamshedpur is directed to pass a fresh order on the merits of the said petition under Section 391 Cr.P.C. without being influenced by this order after giving an opportunity of being heard to the parties concerned.

11. Accordingly, this criminal miscellaneous petition is disposed of with the aforesaid direction.
12. In view of disposal of this criminal miscellaneous petition, the interim relief granted earlier vide order dated 06.01.2025 is vacated.
13. Registry is directed to intimate the court concerned forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 25th November, 2025
AFR/Sonu-Gunjan/-

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