



IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 26TH DAY OF FEBRUARY, 2026
BEFORE
THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY
CRIMINAL PETITION NO. 1765 OF 2026

BETWEEN:

VAISHAK JAYAGOPALA
S/O JAYAGOPAL
AGED ABOUT 23 YEARS
R/AT PRATHAM KRIPA APARTMENT
NO.804, VIDHYA RATHNA NAGAR
MANIPAL, UDUPI, PRESENTLY
R/AT KUNNESHERI KALA HOUSE
KADAMBALIPURA, PALAKKAD
KERALA STATE - 678 001.

...PETITIONER

(BY SRI K. RAVISHANKAR, ADV.)

AND:

THE STATE OF KARNATAKA
REPRESENTED BY SHO
SURATHKAL POLICE
D.K. DISTRICT - 575 014
AND ALSO REPRESENTED BY
THE OFFICE OF THE SPP
HIGH COURT OF KARNATAKA
BENGALURU - 560 001.

...RESPONDENT

(BY SRI VINYA M, HCGP)

THIS CRL.P IS FILED U/S.482(FILED U/S.528 BNSS) CR.P.C
PRAYING TO ALLOW THIS CRIMINAL PETITION AND CONSEQUENTLY
SET ASIDE THE ORDER DATED 08.01.2026 PASSED IN
CRL.A.NO.54/2024 U/S.482 OF BNSS PASSED BY THE ADDL
DISTRICT AND SESSIONS JUDGE, FTSC I (POCSO) D.K.,
MANGALURU.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:





CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

ORAL ORDER

1. This petition under Section 528 of BNSS 2023 is filed with a prayer to set aside the order dated 08.01.2026 passed in Crl.A.No.54 of 2024 by the Court of Addl. District and Sessions Judge, FTSC-I (POCSO), D.K, Mangaluru.
2. Heard the learned counsel for the petitioner and learned HCGP who has appeared on behalf of the respondent - State.
3. Petitioner who was convicted for the offences punishable under Section 8(C), 20(b)(ii)(A) of N.D.P.S. Act, by the jurisdictional Court of Magistrate in C.C.No.2317 of 2021 had filed Criminal Appeal No.54 of 2024 before the Court of Addl. District and Sessions Judge, FTSC-I (POCSO), D.K, Mangaluru, assailing the judgment and order of conviction and sentence passed in C.C.No.2317 of 2021 against him.
4. In the said appeal, petitioner had filed an application under Section 432 of BNSS, 2023 with a prayer to permit the petitioner to further cross-examine the Investigation Officer (PW3), who according to the petitioner was not fully cross-



examined. The said application was opposed by the prosecution by filing objection. The Appellate Court vide the order impugned has rejected the said application. Assailing the same, petitioner is before this Court.

5. Learned Counsel for the petitioner submits that the application filed under Section 432 of BNSS, 2023, is akin to an application under Order XLI Rule 27 CPC. The Hon'ble Supreme Court in the case of **RAMBHAU & ANOTHER VS STATE OF MAHARASHTRA – (2001)4 SCC 759**, has held that such an application has to be considered by the Appellate Court along with the main appeal.

6. Learned HCGP, however, has opposed the prayer made in the petition, and submits that the Trial Court was fully justified in rejecting the application and has placed reliance on the judgment of the Hon'ble Supreme Court in the case of Asim @ Munmun @ Asif Abdulkarim Solanki in CrI.A.No.184/2020 disposed of on 28.01.2020.

7. In Rambhau's case (supra), the Hon'ble Supreme Court in paragraph no.4 has observed as under:



"4. Incidentally, Section 391 forms an exception to the general rule that an appeal must be decided on the evidence which was before the trial court and the powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice. Be it noted further that the doctrine of finality of judicial proceedings does not stand annulled or affected in any way by reason of exercise of power under Section 391 since the same avoids a de novo trial. It is not to fill up the lacuna but to subserve the ends of justice. Needless to record that on an analysis of the Civil Procedure Code, Section 391 is thus akin to Order 41 Rule 27 of the Civil Procedure Code."

8. In the case of **STATE OF RAJASTHAN VS T.N.SAHANI & OTHERS – (2001)10 SCC 619**, the Hon'ble Supreme Court in paragraph no.4, has observed as under:

"4. It may be pointed out that this Court as long back as in 1963 in K. Venkataramiah v. Seetharama Reddy [AIR 1963 SC 1526] pointed out the scope of unamended provision of Order 41 Rule 27(c) that though there might well be cases where even though the court found that it was able to pronounce the judgment on the state of the record as it was, and so, additional evidence could not be required to enable it to pronounce the judgment, it still considered that in the interest of justice something which remained obscure should be filled up so that it could pronounce its judgment in a more satisfactory manner."



This is entirely for the court to consider at the time of hearing of the appeal on merits whether looking into the documents which are sought to be filed as additional evidence, need be looked into to pronounce its judgment in a more satisfactory manner. If that be so, it is always open to the court to look into the documents and for that purpose amended provision of Order 41 Rule 27(b) CPC can be invoked. So the application under Order 41 Rule 27 should have been decided along with the appeal. Had the Court found the documents necessary to pronounce the judgment in the appeal in a more satisfactory manner it would have allowed the same; if not, the same would have been dismissed at that stage. But taking a view on the application before hearing of the appeal, in our view, would be inappropriate. Further the reason given for the dismissal of the application is untenable. The order under challenge cannot, therefore, be sustained. It is accordingly set aside. The application is restored to its file. The High Court will now consider the appeal and the application and decide the matter afresh in accordance with law."

9. From a reading of the aforesaid two judgments, it is apparent that the Hon'ble Supreme Court by a reasoned order, has held that Section 391 Cr.PC which is equivalent to Section 432 of BNSS, 2023, is akin to Order XLI Rule 27 CPC and in the said two cases, it has been held that such an application has to



be decided along with the main appeal at the time of disposal of the appeal/final hearing of the appeal on merits, and not separately.

10. Section 432 of BNSS, 2023, which is parimateria to Section 391 Cr.PC, reads as under:

"(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it be taken by a Magistrate or, When the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his advocate shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXV, as if it were and inquiry."

11. From a reading of the opening words of the aforesaid provision of law, it is very clear that an application filed under the said provision of law, should be considered by the Appellate



Court while dealing with criminal appeal and if the Appellate Court comes to a conclusion that additional evidence is necessary, then such application can be dealt with after going through the entire records of the Trial Court and hearing both the parties.

12. Under similar circumstances, the High Court of Madhya Pradesh at Jabalpur in the case of SHIJU K SAMUEL V. ANIL KUMAR JAIN - M.CR.C.NO.37698/2025 DTD. 04.09.2025, after referring to the judgment of the Hon'ble Supreme Court in **Rambhau's** case (supra) as well as **T.N.Sahani's** case (supra), has held that application filed under Section 432 of BNSS/Section 391 of Cr.PC has to be decided at the time of final hearing of the appeal on merits, and not separately.

13. Perusal of the order passed by the Hon'ble Supreme Court in **Asim's** case (supra), would go to show that in the said case, the earlier judgments of the Hon'ble Supreme Court in **Rambhau's** case (supra) and **T.N.Sahani's** case (supra) was not considered and an opinion was expressed that it is desirable that an application filed under Section 391 Cr.PC



should be heard immediately after it is filed without waiting for the appeal to be finally heard.

14. Under the circumstances, I am of the opinion that in view of the earlier judgments of the Hon'ble Supreme Court in **Rambhau's** case (supra) and **T.N.Sahani's** case (supra), the Trial Court was not justified in passing the impugned order. Accordingly, the following order:

15. Petition is allowed. The impugned order 08.01.2026 passed by the Court of Addl. District & Sessions Judge, FTSC-1 (POCSO), D.K. Mangaluru, in Crl.A.No.54/2024, is set aside, and the Trial Court is directed to consider the application filed under Section 432 of BNSS, 2023 on its merits along with the main appeal.

Sd/-
(S VISHWAJITH SHETTY)
JUDGE