



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1006 OF 2024

Ramdas S/o. Madhavrao Korde,
Age 7 6 years, Occ. Agri.
R/o. Nagar Aurangabad Road,
Pravara Sangam, Tq. Newasa,
Dist. Ahmednagar.

.. Petitioner (Ori. Complainant)

Versus

Shrikant S/o. Sudhakar Dahale
Age 60 years, Occ. Busines,
R/o. Shop No.4, Main Road,
Newasa (Kh.), Tq. Newasa,
Dist. Ahmednagar.

.. Respondent (Ori. Accused)

Mr. Mahesh S. Deshmukh, Advocate for the petitioner,
Mr. Zafar M. Pathan, Advocate for respondent.

CORAM : MEHROZ K. PATHAN, J.

**RESERVED ON : 9th FEBRUARY, 2026.
PRONOUNCED ON : 25th FEBRUARY, 2026.**

JUDGMENT :-

1. The petitioner has filed the filed the present petition for quashing and setting aside the orders dated 20.12.2023 and 19.3.2024, passed below Exhibits 38 and 41, respectively, in Criminal Appeal No. 39 of 2018 passed by the learned Additional Sessions Judge, Ahmednagar with a further direction to reject the application below Exhibits 38 and 41.

2. This Court has granted stay to the proceedings vide order dated 24.6.2024 and since then the appeal before the learned Sessions Judge, Ahmednagar bearing Criminal Appeal No. 39 of 2018 filed against

the conviction of the respondent is pending adjudication.

3. The learned counsel for the petitioner submits that the application filed by the accused below Exh.41 was only filed for the production of documents. Perusal of the application itself would suggest that prayer made by the accused was only to allow him to produce the documents and not to lead any additional evidence. It is further submitted that perusal of Exh.39 would show that the applicant had filed another application for permitting the accused for production of documents on record vide application at Exh. 41 dated 17.2.2024. The petitioner had filed his reply to the said application on 16.3.2024 opposing any such permission to be granted to the accused, on the ground that the accused had enough opportunity to produce the said documents before the trial court and the accused has failed to give any reason as to why the accused has not produced the said documents during the trial and has presented the said documents only at an appellate stage. The petitioner, therefore, prayed for dismissal of said application. However, the learned appellate court vide order dated 20.12.2023 had allowed Exh.38 filed by the accused for production of documents. The learned Sessions Judge has further allowed Exh.41 by order dated 19.3.2024 on the ground that the documents are necessary for deciding the appeal. The learned counsel therefore submits that the observation of the learned Session Judge, in its order dated 19.3.2024 that the documents were permitted to be brought on record shall be considered as an additional evidence for deciding the appeal are uncalled for. The learned counsel for the applicant has serious objection to such observations being made by the learned appellate court there being no such application moved by the prosecution for treating the said documents as additional evidence. All that the applicant prayed for is that, the accused shall be allowed to produce the documents on record, whereas, there was no prayer in the application to treat the documents as

additional evidence. Even then, such observations are made by the trial court thereby causing serious prejudice to the complainant by allowing such documents to be read in evidence by the sessions Judge in appeal. Hence, the impugned orders may be quashed and set aside.

4. The learned counsel for the petitioner further submits that even the application made by the accused would show that they failed to invoke the powers under Section 391 of Cr.P.C. and had not prayed to lead the additional evidence in appeal. Still, the said application is allowed by exercising powers under Section 391 of Cr.P.C. In absence of any such application made by the accused, the appellate court should not have exercised the said powers, which is detrimental to the interest of the complainant. Hence, the said orders may be quashed and set aside by rejecting the applications below Exh.38 and 41. In support of his submissions, the learned counsel for petitioner relies upon the following judgments.

- i] *Nago Manik Patil vs. Pratap Gabaji Patil and another 2013(4) Mh.L.J. (Cri.) 218;*
- ii] *Brig. Sukhjeet Singh (Retd.) MVC vs. The State of Uttar Pradesh and others; 2019 ALL SCR (Cri.) 342;*
- iii] *Sarika Shirodkar vs. The Bicholim Urban Cooperative Bank Limited and others 2015 ALL MR (Cri.) 3557;*
- iv] *Abdul Kalam vs. Jaibuness Bewa; 2017 AIR CC 1441.*

5. As against this, the learned counsel for the respondent opposed the petition on the ground that the petition is filed only with an intention to protract the decision of the appeal as the petitioner has already substantiated his case on merits by producing said documents on record in his defence. The respondent was already convicted by the trial court for dishonour of cheque issued only by way of security to the hand-

loan taken by the accused from one Sambhajirao Phatke, ex-MLA from Shevgaon who had misused the said cheques by giving one cheque to his brother in law Mr. Sarjerao Dhawane, who had filed complaint before JMFC, Rahata, another cheque to Mr. Ramdas Korde (present petitioner) and third cheque to Mr. Shivaji Phatke, who is the real brother of Sambhajirao Phatke. who had filed the complaint before the JMFC Newasa. The learned counsel for the respondent further submits that the accused already put up a good defence in the cross-examination of the witnesses as well as the present petitioner, by substantiating his claim that the transaction was a money lending transaction as the accused had taken a hand-loan from Sambhaji Phatke and the same is not an enforceable/recoverable debt for which the accused respondent shall be convicted. It is only in support of the case put up at the behest of the accused that the aforesaid documents were to be brought on record to substantiate his defence. Moreover, the learned appellate court after evaluating the relevancy of those documents, allowed the accused to produce those documents on record by passing a speaking order and giving sufficient reasons to justify the same. Powers under Section 391 of Cr.P.C. are also invoked by the trial court while allowing the said application and the discretion vested in the trial court is to give reasons, as to whether the production of the said documents was necessary. The reasons is clearly expressed in the impugned order. The learned counsel for the respondent therefore prays for rejection of the writ petition advocating the stay.

6. I have considered the impugned order dated 20.12.2023 passed by the learned Sessions Judge, Ahmednagar below Ex.38 allowing the application and permitting the accused to place the documents on record, and also the order dated 19.3.2024 passed below Exh.41 exercising powers under Section 391 of Cr.P.C. to produce certain documents as mentioned in the list annexed with the application on

record.

7. Perusal of the said orders of the learned Sessions Judge reveals that the learned Sessions Judge has applied its mind to the application below Exh.38 filed by the accused and relying upon the judgment of the Supreme Court in the case of *Brig. Sukhjeet Singh (Retd.)MNC vs. State of Uttar Pradesh and others (cited supra)* has held that the documents which are sought to be relied upon by the accused are necessary for deciding the appeal. It has also observed that the documents being certified copies, the objection of the complainant that the appellant did not examine the concerned persons relating to those documents before the learned trial court does not survive, keeping reserved the merits of the relevancy of such documents to be decided at the time of final decision of the appeal. The impugned order dated 19.3.2024 also takes into consideration the judgments relied upon by the learned counsel for the accused/appellant in the case of Brig. Sukhjeet Singh (cited supra) and observed that the powers under section 391 is to be exercised by the appellate court when it thinks that the additional evidence is necessary. The word “necessary” means “necessary for deciding on merits”. It is further observed that the said documents being certified copies, can be considered as an additional evidence as there is no need of taking additional evidence. The learned trial court has also observed that the accused has already cross-examined complainant on the said point and as such, no prejudice is going to be caused to the complainant if the said documents are produced on record.

8. Section 391 of the Cr.PC. reads thus :-

“391. Appellate Court may take further evidence or direct it to be taken.

(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 to 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 pleader 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 XXIII, as if it were an inquiry.”

The Honourable Supreme Court in the judgment reported in ***Brig. Sukhjeet Singh (Retd.) MVC vs. The State of Uttar Pradesh and others***, (cited supra) has observed thus :-

“19. Filing of the application before the High Court to accept the certified copy of the Trust Deed and the Resolution and permit the appellant to lead evidence can in no manner be said to be malafide motive of the accused, who had been convicted in the appeal, has right to take all the grounds and also lead additional evidence, which in accordance with the Appellate Court is necessary in deciding the appeal. As noted above, this Court has laid down that when it becomes necessary to take additional evidence, cannot be enlisted or enumerated in any fixed formula. It depends on facts of each and every case to come to a conclusion as to whether it is necessary to take additional evidence or not.”

9. Considering the law laid down by the Honourable Apex Court and the provisions of section 391 of Cr.P.C., it can be safely concluded that there are no fetters on the powers of the appellate court under Section 391 of Cr.P.C. The powers are conferred on the court to achieve the ends of justice and whenever the appellate court finds that the documents are necessary for deciding the appeal, the said powers under Section 391 can be exercised.

10. The powers under Section 391 of Cr.PC. are also invoked by the appellate court while allowing the said application by recording a finding that the production of said documents was necessary and the reasons are also mentioned in the impugned order.

11. The objection of the petitioner that the said application, does not contain a prayer for leading evidence and no mention about the application being filed under Section 391 to lead additional evidence, as the said application was only filed for production of the documents and not for leading the additional evidence, is misconceived. The powers under Section 391 are inherent powers of the court, which can be exercised even without any such application being filed or a prayer made therein for treating the documents as additional evidence, while dealing with any appeal, the appellate Court if it thinks additional evidence to be necessary shall record its reasons and either take evidence itself or direct it to be taken by a lower court.

12. The learned Single Judge of the Bombay High Court, Bench at Goa in the reported judgment in the case of *Sarika Shirodkar vs. The Bicholim Urban Cooperative bank Ltd. And others (cited supra)* was pleased to hold that mere production of the documents without the opportunity to prove or read the same in evidence shall be inconsequential and superfluous and such interpretation would lead to absurd result.

13. Perusal of the testimony of the witnesses which are annexed to the application would show that enough foundation was laid down by the accused about the defence of the witness handing over the amount as loan to the accused and accused handing over the said cheques only by way of security. The cross-examination of the accused is also on the

point that the 3 cheques which were handed over to Mr. Sambhajirao Phatke – ex-MLA of Shevgaon constituency were allegedly misused by him, one cheque was given to Sarjerao Dhavne, the brother in law of Sambhajirao Phatke, who had filed a complaint at JMFC, Rahata. The second cheque was given to one Shivaji Phatke, who is the real brother of Sambhajirao Phatke, who filed the complaint before the JMFC, Newasa and the third cheque was given to the accused Ramdas Korde (present petitioner). The relevancy of those documents are to be decided at the time of deciding the appeal. However, the appellant who is already convicted cannot be deprived of the opportunity of leading additional evidence which is nothing but certified copies of the documents sought to be relied upon and as such, the observations of the learned trial court that the said documents which are allowed to be brought on record shall be considered as additional evidence for deciding the appeal by exercising powers under Section 391 of Cr.P.C., does not call for any interference by this court in its supervisory jurisdiction under Article 227 of the Constitution of India. The impugned orders are just and proper and deserve to be maintained.

14. It is almost a settled law that an accused who has been convicted has the right to raise all grounds in appeal and may also lead additional evidence, if the Appellate Court considers such evidence necessary for deciding the appeal. In the present case, the convicted accused has filed an application for production of documents, which are certified copies. The Appellate Court has permitted these documents to be treated as additional evidence, as they are certified copies and have been found necessary for a just decision of the appeal. When it becomes necessary to take additional evidence, the same cannot be enumerated in any straitjacket procedure. It will always depend upon the facts of each case, and it is for the Appellate Court to conclude whether additional evidence is required. In the facts and circumstances of the present case,

the learned Appellate Court has taken into consideration the relevance of the documents sought to be produced on record by the Appellant, who is the convict, and has thus permitted them to be brought on record and read as additional evidence. I do not find any error in the approach adopted by the learned Appellate Court. The petition is, therefore, devoid of substance and merit and same is hereby dismissed.

15. Since the objection is pending from 2024 and the proceedings in Criminal Appeal No. 39 of 2018 are pending adjudication before the learned Sessions Judge, in view of the stay granted by this Court vide order dated 24.6.2024, the learned Sessions Judge is requested to make an endeavour to decide the appeal, as expeditiously as possible and preferably within one year from the date of receipt of this order.

[MEHROZ K. PATHAN]
JUDGE.

grt/-