

THE HON'BLE SMT.JUSTICE TIRUMALA DEVI EADA

CRIMINAL PETITION No.11058 of 2025

ORDER:

This Criminal Petition is filed by the petitioner-appellant-accused seeking to quash the order dated 25.07.2025 passed in CrI.M.P. No.22 of 2023 in CrI.A. No.859 of 2017 by the III Additional District Judge, L.B. Nagar, R.R. District, filed under Section 391 Cr.P.C., wherein the said petition was dismissed.

2. Heard Mr. V. Venkata Subramanyam, learned counsel for the petitioner and Sri A Ravinder Reddy, learned Senior Counsel, representing Sri Ch. Venkateshwara Reddy, learned counsel for the respondent No.1.

3. The case of the petitioner is that the *de facto* complainant has filed a case under Section 138 of the Negotiable Instruments Act (for short 'NI Act') before the trial court against the petitioner herein and the trial court has passed judgment of conviction against the petitioner without going into the material placed on record and that aggrieved by the said judgment, an appeal is filed before the appellate Court and the said appeal is pending *vide* CrI.A. No.859 of 2017 on the file of III Additional District Judge. In the said appeal, the petitioner has preferred an application under Section 391

Cr.P.C., praying the court to receive certain additional evidence. The said application was dismissed. It is her further case that she along with other partners has verified the account books of their firm for the years from 2012 to 2016 and then she noticed the records and cheque books which were maintained by her husband with his own hand-writing and on verification, she could notice the cheque book containing the subject cheques was missing and also after verification of the statement of account, the petitioner came to know that the respondent No.1 used two cheques and except the said two cheques no other cheque in the cheque book was utilized and that the same was in his custody. Thus, she filed the application under Section 391 Cr.P.C., before the appellate court to receive the said documents as additional evidence, but the same was dismissed by the appellate court. Aggrieved by the said dismissal order, the present criminal petition is filed.

4. Learned counsel for the petitioner has submitted that the order passed by the appellate court is without any merit and that the petitioner wants to put forth these documents as additional evidence, for which the appellate court has to allow the petition under Section 391 Cr.P.C., but the same was dismissed by the appellate court. He further submitted that documents which the petitioner wants to file as

additional evidence are very crucial documents and that no prejudice would be caused to the respondent No.1 if they are received as additional evidence. Hence, he prayed this Court to set aside the orders passed by the appellate court and allow the petitioner to adduce the additional evidence.

5. Learned counsel for the respondent No.1 has submitted that the CC pertains to the year 2016 and when the judgment of conviction was rendered by the trial court in the year 2017 against the petitioner, she has preferred an appeal in 2017 and the matter is still kept pending due to the dilatory tactics played by the petitioner herein. He further submitted that the petitioner is due to pay legally enforceable debt to the respondent No.1 herein, but she is evading the same, just by playing dilatory tactics and the present application is filed in 2025 and she wants to further drag on the matter. He further submitted that there is no substance in the contention of the petitioner and that all the documents are already on record and the prayer made in the application filed under Section 391 Cr.P.C., is not tenable because the said section envisages that the petition can be filed only in certain circumstances which are not made out by the petitioner herein. He, therefore, prayed to dismiss the petition.

6. Perused the record.

7. The petitioner herein is the appellant in Crl.A. No.859 of 2017. She intends to file certain documents as additional evidence and the application under Section 391 Cr.P.C., was filed before the trial court. For the sake of reference, Section 391 Cr.P.C. is extracted hereunder:

“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.”

8. The said section envisages that the additional evidence can be adduced before the appellate court in certain circumstances.

9. The Learned counsel for the petitioner has submitted that the petitioner intends to file certain documents and that no prejudice would be caused to the respondent No.1 if the same are received as

additional evidence and a fair chance has to be given to the petitioners, but the appellate court has dismissed the said application.

10. A perusal of the impugned order discloses that the appellate court has dismissed the petition by relying upon a decision in **Ashok Tshering Bhutia v. State of Sikkim**¹, wherein it was held that if the appellate court considers certain evidence is necessary and is unable to give a correct finding then only it would be justified in taking additional evidence under this section. But, the additional evidence does not mean to fill up the gap in prosecution's case and it can be taken in exceptional circumstances to remove an irregularity where the circumstances so warrant in public interest. Relying upon the said decision, the appellate court has dismissed the petition. It was further observed that it is only the delay tactics adopted by the accused.

11. In the present case, the alleged documents that are to be filed are also discussed by the appellate court that the two ledgers sought for production are alleged to have been seized by the Civil Supplies Department and that if at all the said ledgers are produced at this juncture and even if they show the handwriting of the husband

¹ (2011) 4 SCC 402

of the accused, still that is not going to infer anything to say that the complainant was in the custody of the cheques pertaining the accused. The appellate court further observed that even in such circumstances, it cannot be held that the complainant has unlawfully gained the custody of the two cheques. The appellate court ought not to have assumed the things and drawn an adverse inference as against the documents that are proposed to be received in evidence.

12. The learned counsel for the petitioner has relied upon the decision in **Ajitsinh Chehuji Rathod v. State of Gujarat and another**², wherein it was held that power to record additional evidence under Section 391 Cr.P.C. should only be exercised when the party making such request was prevented from presenting the evidence in the trial despite due diligence being exercised or that the facts giving rise to such prayer came to light at a later stage during pendency of the appeal and that non-recording of such evidence may lead to failure of justice.

13. In **Brig. Sukhjeet Singh (Retd) MVC v. TATE of Uttar Pradesh and Ors.**³, wherein it was held that:

“14. Power to take additional evidence under Section 391 is, thus, with an object to appropriately decide the appeal by the

² (2024) 4 SCC 453

³ AIR Online 2019 SC 2579

Appellate Court to secure ends of justice. The scope and ambit of Section 391 Cr.P.C. has come up for consideration before this Court in **Rajeswar Prasad Misra v. State of West Bengal [AIR 1965 SC 1887]**. Justice Hidayatullah, speaking for the Bench held that a wide discretion is conferred on the Appellate Courts and the additional evidence may be necessary for a variety of reasons. He held that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it.”

14. Thus, in view of the above cited decisions and in the light of the above held discussion, the petition needs to be allowed by setting aside the impugned order of the appellate court.

15. Accordingly, the Criminal Petition is allowed setting aside the order dated 25.07.2025 passed in Crl.M.P. No.22 of 2023 in Crl.A. No.859 of 2017 by the III Additional District Judge, L.B. Nagar, R.R. District and the petition filed by the petitioner under Section 391 Cr.P.C., stands allowed and the petitioner is permitted to adduce additional evidence.

Miscellaneous Petitions, pending if any, shall stand closed.

JUSTICE TIRUMALA DEVI EADA

November 18, 2025
KTL