

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Cr. MMO No. 538 of 2026**

**Reserved on: 27.05.2026**

**Date of Decision: 22.06.2026**

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Anil Indoria & Anr

...Petitioner

Versus

M/s Techno Plastic Industries

...Respondent

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*Coram*

*Hon'ble Mr Justice Rakesh Kainthla, Judge.*

*Whether approved for reporting?*<sup>1</sup> No

For the Petitioners : Mr Girdhari Sharma (through video conferencing) and Mr Rajat Kumar, Advocate, vice Ms Pragti, Advocate.

For the respondent : None

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***Rakesh Kainthla, Judge***

The petitioners have filed the present petition for quashing and setting aside the order dated 08.05.2026 passed by the learned District and Sessions Judge, Sirmaur, in criminal appeal No. 55 of 2025 titled Anil Indoria and another vs. M/s Techno Plastic, vide which an application filed under Section 391 of Cr.P.C corresponding to Section 432 of Bhartiya Nagrik Suraksha Sanhita (BNSS) was dismissed. (*The parties shall hereinafter be referred to in*

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<sup>1</sup> Whether reporters of Local Papers may be allowed to see the judgment? Yes.

*the same manner as they were arrayed before the learned Trial Court for convenience).*

2. Briefly stated, the facts giving rise to the present petition are that the learned Trial Court convicted the petitioner/accused of the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act), sentenced him to undergo simple imprisonment for one year and pay a compensation of ₹8 lakh to the complainant, and in default of payment of compensation to undergo simple imprisonment for two months.

3. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused filed an appeal, which is pending before the learned Sessions Judge, Sirmaur (learned Appellate Court).

4. The petitioner/accused filed an application under Section 391 of the Code of Criminal Procedure (Cr.P.C.) asserting that certain material documents could not be produced before the learned Trial Court because of, *bona fide*, reasons beyond the control of the petitioner. The petitioner/accused resided at a distance of about 500 kilometres from the place where the Court

was situated. He could not maintain effective communication with his counsel. He needed to place the documents mentioned in the application on record. The documents were essential for the just and proper adjudication of the dispute. Therefore, it was prayed that the present application be allowed and the documents be taken on record.

5. The application was opposed by filing a reply raising preliminary objections regarding lack of maintainability, the accused being estopped to file the application by his acts and conduct and the application being an attempt to conduct a, *de novo*, trial. The contents of the application were denied on the merits. It was asserted that the accused remained present throughout the proceedings and also led defence evidence. The accused had also put some of the documents to the complainant in cross-examination, but did not prove them. The jurisdiction vested with the Court to receive the additional evidence is to be used judiciously. No case was made out for the exercise of the jurisdiction. Hence, it was prayed that the application be dismissed.

6. Learned Appellate Court held that the jurisdiction under Section 391 of the Cr.P.C could not be exercised to fill up the lacuna

in the defence or to permit a *de novo* trial under the guise of additional evidence. The accused remained present during the trial and actively participated in the defence. He is seeking to produce the documents that were in his knowledge and possession during the trial. He has failed to assign any cogent reason for the non-production of the documents. Therefore, the application was dismissed.

7. Being aggrieved from the order passed by the learned Appellate Court, the accused has filed the present petition asserting that the order is contrary to the provisions of Section 391 of the Cr.P.C., which confers wide discretionary powers upon the Appellate Court to take additional evidence. The documents were essential to establish that the amount filled in the cheque does not represent a legally enforceable debt or liability. Section 391 of the Cr.P.C. does not provide that a document which should have been produced before the learned Trial court cannot be produced in an appeal. The complainant had unilaterally added the interest without any agreement. Therefore, it was prayed that the present petition be allowed and the order passed by the learned Appellate Court be set aside.

8. Mr Girdhari Sharma, learned counsel for the petitioner/applicant/accused, submitted through video conferencing that the documents sought to be produced on record are relevant for the adjudication of the dispute pending between the parties. They would demonstrate that the complainant had added the interest unilaterally. Some of the material was returned, but was not accounted for. The photographs show that the condition of the material was not proper. The documents could not be produced before the learned Trial Court, and the applicant is residing at a distance of about 500 kilometres from the place where the Court is located. The learned Appellate Court erred in holding that the exercise of due diligence is essential for producing the additional evidence. There is no such requirement under Section 391 of the Cr.P.C. Therefore, he prayed that the present petition be allowed and the order passed by the learned Appellate Court be set aside. He relied upon the judgments in *Navneet vs. Lrs of Smt. Prem Devi 2025 Supreme (Raj) 1461* and *Brig. Sukhjeet Singh (Retd.) vs. State of Uttar Pradesh and others 2019 Supreme (SC) 72* in support of his submissions.

9. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

10. It was laid down by the Hon'ble Supreme Court in *State of Rajasthan v. Asharam*, 2023 SCC OnLine SC 423, that Sections 311 and 391 of Cr. P.C. deal with the power of the Court to take additional evidence. Section 311 deals with the trial, while Section 391 deals with the appeal. The Appellate Court can examine the evidence, but it does not possess the wide powers conferred upon the Trial Court. It was observed:

“6. Both Sections 311 and 391 of the Cr. P.C. relate to the power of the court to take additional evidence; the former at the stage of trial and before the judgment is pronounced; and the latter at the appellate stage after judgment by the trial court has been pronounced. It may not be totally correct to state that the same considerations would apply to both situations, as there is a difference in the stages. Section 311 of the Cr. P.C. consists of two parts; the first gives power to the court to summon any witness at any stage of inquiry, trial or other proceedings, whether the person is listed as a witness, or is in attendance though not summoned as a witness. Secondly, the trial court has the power to recall and re-examine any person already examined if his evidence appears to be essential to the just decision of the case. On the other hand, the discretion under Section 391 of the Cr. P.C. should be read as somewhat more restricted in comparison to Section 311 of the Cr. P.C., as the appellate court is dealing with an appeal, after the trial court has come to a conclusion with regard to the guilt or otherwise of the person being prosecuted. The appellate court can examine the evidence in depth and detail, yet it does not possess all the powers of the trial court, as it deals with cases wherein the decision has already been pronounced.”

11. It was laid down in *Sukhjeet Singh v. State of U.P.*, (2019) 16 SCC 712: (2020) 2 SCC (Cri) 434: 2019 SCC OnLine SC 72, that the additional evidence can be taken by the Appellate Court if the evidence is necessary for just determination of the case; however, Section 391 cannot be used for retrial. The order should not be made if the party had sufficient opportunities and had not availed those opportunities. It was observed at page 721:

“24. Power to take additional evidence under Section 391 is, thus, with an object to appropriately decide the appeal by the appellate court to secure ends of justice. The scope and ambit of Section 391 CrPC has come up for consideration before this Court in *Rajeswar Prasad Misra v. State of W.B.* [*Rajeswar Prasad Misra v. State of W.B.*, AIR 1965 SC 1887: (1965) 2 Cri LJ 817] Hidayatullah, J., 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 a failure of justice without it*. The following was laid down in paras 8 and 9: (AIR p. 1892)

“8. ... Since a wide discretion is conferred on appellate courts, the limits of that court's jurisdiction must obviously be dictated by the exigency of the situation and fair play, and good sense appear to be the only safe guides. There is no doubt, some analogy between the power to order a retrial and the power to take additional evidence. The former is an extreme step appropriately taken if additional evidence will not suffice. Both actions subsume failure of justice as a condition precedent. There, the resemblance ends, and it is hardly proper to

construe one section with the aid of observations made by this Court in the interpretation of the other section.

9. Additional evidence may be necessary for a variety of reasons, which it is hardly necessary (even if it was possible) to list here. We do not propose to do what the legislature has refrained from doing, namely, to control the discretion of the appellate court under certain stated circumstances. It may, however, be said that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be a failure of justice without it. The power must be exercised sparingly and only in suitable cases. Once such action is justified, there is no restriction on the kind of evidence that may be received. It may be formal or substantial. It must, of course, not be received in such a way as to cause prejudice to the accused, as, for example, it should not be received as a disguise for a retrial or to change the nature of the case against him. The order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it unless the requirements of justice dictate otherwise.”

25. This Court again, in *Rambhau v. State of Maharashtra* [*Rambhau v. State of Maharashtra*, (2001) 4 SCC 759: 2001 SCC (Cri) 812], had noted the power under Section 391 CrPC of the appellate court. The following was stated in paras 1 and 2: (SCC p. 761)

1. There is available a very wide discretion is available in the matter of obtaining additional evidence in terms of Section 391 of the Code of Criminal Procedure. A plain look at the statutory provisions (Section 391) would reveal the same...

2. A word of caution, however, ought to be introduced for guidance, to wit: that this additional evidence cannot and ought not to be received in such a way as to cause any prejudice to the accused. It is not a disguise for a retrial or to change the nature of the case against

the accused. This Court in *Rajeswar Prasad Misra v. State of W.B.* [*Rajeswar Prasad Misra v. State of W.B.*, AIR 1965 SC 1887: (1965) 2 Cri LJ 817] in no uncertain terms observed that *the order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it.* This Court was candid enough to record, however, that it is the concept of justice which ought to prevail, and in the event, the same dictates exercise of power as conferred by the Code, there ought not to be any hesitation in that regard.”

26. From the law laid down by this Court as noted above, it is clear that there are no fetters on the power under Section 391 CrPC of the appellate court. All powers are conferred on the court to secure the ends of justice. The ultimate object of judicial administration is to secure the ends of justice. The court exists for rendering justice to the people.” (Emphasis supplied)

12. This position was reiterated in *State (NCT of Delhi) v. Pankaj Chaudhary*, (2019) 11 SCC 575: (2019) 4 SCC (Cri) 264: 2018 SCC OnLine SC 2256, and it was held that this power should not be exercised to fill up the gaps by either side, especially to reverse the judgment of the learned Trial Court. It was observed at page 586:

“25. The High Court observed that the trial court erred in saying that the accused failed to prove the making of previous complaints against the prosecutrix. While saying so, the High Court referred to certain complaints made against the prosecutrix, including the one allegedly given on 21-7-1997, which were produced by the Bar at the time of arguments. The power conferred under Section 391 CrPC is to be exercised with great care and caution. In dealing with any appeal, the appellate court can refer to the additional evidence only if the same has been recorded as provided under Section 391 CrPC. Any material produced before the

appellate court to fill in the gaps by either side cannot be considered by the appellate court; more so, to reverse the judgment of the trial court.”

13. Similarly, it was held in *H.N. Jagadeesh v. R. Rajeshwari*, (2019) 16 SCC 730: (2020) 2 SCC (Cri) 450: (2020) 2 SCC (Civ) 758: 2017 SCC OnLine SC 1813, that where the complainant had failed to produce the notice before the learned Trial Court, he could not be permitted to lead the evidence before the learned Appellate Court to prove it. It was observed at page 731:

“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 the cheque is a necessary precondition for filing 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 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 amounts to giving an opportunity to the respondent to fill up the lacuna.”

14. It was laid down in *Rajvinder Singh v. State of Haryana*, (2016) 14 SCC 671: (2016) 4 SCC (Cri) 421: 2015 SCC OnLine SC 971 that where it was possible to examine the Forensic Expert at the trial stage, an application to examine him at the appellate stage cannot be allowed. It was observed at page 677

“12. At the outset, we must deal with submissions as regards the application for leading additional evidence at the appellate stage. It has been the consistent defence of the appellant that the dead body found in agricultural fields in District Muzaffarnagar was that of Pushpa Verma, and he went to the extent of producing a photograph of the dead body in the present trial. He also examined Brahm Pal Singh, Sub-Inspector and other witnesses. It was certainly possible to examine a forensic expert at the trial court stage itself, and the High Court was right and justified in rejecting the prayer to lead additional evidence at the appellate stage. Nonetheless, we have gone through the report of the said forensic expert engaged by the appellant. The exercise undertaken by that expert is to start with the admitted photograph of Pushpa Verma on a computer, then remove the “bindi” by some process on the computer, then by the same process remove her spectacles and by computer imaging change the image as it would have looked if the lady was lying down in an injured condition. The computer image so changed was then compared with the photograph of the dead body. We have seen both the images, and we are not convinced at all about any element of similarity. We do not, therefore, see any reason to differ from the view taken by the High Court.”

15. It was held in *Ajitsinh Chehuji Rathod v. State of Gujarat*, (2024) 4 SCC 453: 2024 SCC OnLine SC 77, that the power under Section 391 of Cr.P.C. can be exercised when the party was prevented from presenting the evidence despite the exercise of due diligence or the facts giving rise to such prayer came to light during the pendency of the appeal. It was observed at page 455:

“8. At the outset, we may note that the law is well-settled by a catena of judgments rendered by this Court that power to record additional evidence under Section 391CrPC 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.”

16. A similar view was taken in *Navneet* (supra).
17. The accused mentioned in para-3 of the application that he intended to place on record the documents mentioned by him. He asserted in para-5 that the documents are genuine, relevant and necessary for the just and proper adjudication of the appeal. He asserted in para-6 that non- consideration of the documents would result in a miscarriage of justice. He asserted in para-7 that the documents were necessary to be taken on record in the interest of justice and for proper appreciation of the facts. The application is silent as to how the documents sought to be placed on record would assist the Court in determining the controversy. Merely writing that the documents are necessary for the adjudication of the dispute cannot result in the admission of the documents, and it was required to be shown how the documents were necessary for the proper adjudication of the dispute. This could have been demonstrated by referring to the contents of the documents and the complaint or the defence to show their relevance to the dispute

pending before the learned Appellate Court; however, the accused failed to do so and his application could not have been allowed by the learned Appellate Court.

18. The accused failed to assign any reason as to why the documents were not produced by him before the learned Trial Court. The documents were in existence at the time when the evidence was being produced before the learned Trial Court. The submission that Section 391 of Cr.P.C does not contemplate the exercise of due diligence before invoking the jurisdiction under Section 391 of Cr.P.C cannot be accepted because the Hon'ble Supreme Court has consistently laid down that a party must show due diligence and the reason why the document could not be produced before the learned Trial Court. Since no such material was available on record, the learned Appellate Court was justified in rejecting the application.

19. It was submitted that the accused used to reside at a distance of 500 kilometres from the place where the Court is located, and this distance prejudiced the accused. This submission will not help the accused. It is not the case of the accused that he was unable to appear before the Court. The Learned Appellate Court

had noticed that the accused had effectively participated in the proceeding before the learned Trial Court and had even put up his defence. Therefore, the reason assigned in the present petition that he was residing at a distance of about 500 kilometres from the place where the Court is located is not sufficient to admit the additional evidence.

20. It is trite to say that the jurisdiction under Section 482 of Cr.P.C. corresponding to Section 528 of BNSS is to be sparingly exercised to prevent the miscarriage of justice or abuse of the process of the Court. In the present case, there is no miscarriage of justice, and the jurisdiction cannot be exercised.

21. No other point was urged.

22. In view of the above, the present petition fails, and it is dismissed.

23. The observations made hereinbefore shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

**(Rakesh Kainthla)**  
**Judge**

22<sup>nd</sup> June, 2026  
(Nikita)