



2025:AHC:173161

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 35352 of 2025

Madhu Sudhan Sharma

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Ravindra Sharma
Counsel for Opposite Party(s)	:	G.A.

Court No. - 75

HON'BLE VIKAS BUDHWAR, J.

1. Supplementary affidavit, filed today, is taken on record.
2. Heard Sri Ravindra Sharma, learned counsel for the applicant and Sri S.P. Singh, learned State Law Officer for the State.
3. This application under Section 528 BNSS has been filed by the applicant to quash the condition imposed in order dated 19.08.2025 passed by Additional Sessions Judge, Court No. 14, Agra in Criminal Appeal No. 222 of 2023 (Madhusudan Sharma v. State of U.P. and others), under Section 138 of the N.I. Act, Police Station - Hariparwat, District Agra as well as application dated 29.07.2025, under Section 391 Cr.P.C. /432 BNSS.
4. The case of the applicant is that a complaint under section 138 of the N.I. Act came to be lodged by the opposite party no. 2 against the applicant with an allegation that with respect to discharge of the liability had drawn a cheque bearing no.141264 of Rs. 45,90,000/- and the another cheque no. 833655 of Rs. 80,00,000 dated 24.11.2015 and the cheque no.141264 on presentation in the bank, came to be dishonored on 24.11.2025 and so far as the cheque no. 833655 dated 24.11.2025 of Rs. 80,00,000/- is concerned, the same was dishonored on 16.12.2025 followed by a statutory demand notice dated 21.01.2016 and the complaint on 01.03.2016, pursuant whereto the applicant came to be summoned. Post trial, by virtue of the judgment and order dated 27.09.2023 passed by the Presiding Officer, Special Judge 138 of the N.I. Act, Agra in complaint case No. 1120 of 2016, the applicant came to be convicted while sentencing him for six months simple

imprisonment and fine of Rs. 1,68,77,800/- to be paid to the complainant and Rs. 10,00,000/- in the State exchequer.

5. Assailing the same, the applicant herein preferred a criminal appeal bearing No. 222 of 2023. During the pendency of the said appeal, an application under Section 391 Cr.P.C./ 432 BNSS came to be preferred by the applicant for obtaining of the opinion of handwriting experts which came to be rejected and it was recited that the applicant- accused had cross-examined Ankur Agarwal (PW1) and as questions with regard to Akash Sharma, Manish, Ashwani Gupta and the same was replied by Ankur Agarwal, PW1 that Akash Sharma is working in the company of PW1, Ankur Agarwal, so much so Manish Agarwal is also an employee and Akash is a driver and Manish, thus, the work related to bank and on a question being raised, whether PW1, Ankur Agarwal is remembering the fact regarding sending Manish, his employee to take payments from the bank and relatable to the applicant- accused PW1, Ankur Agarwal came up with a stand that he does not remember the same but after looking into the records, he can make statement and with regard to Akash, whether he was sent for taking payment from the applicant, he can only give a statement after looking into the record and Akash and Manish are their employees at 7 to 8 years. In the said application, it was also recited in the proceedings under Section 313 Cr.P.C., a statement has been made by the applicant that the subject cheque 833456 and 833656 had been handed over to the opposite party no. 2 and the receipt with regard to the payment so made and the bank documents and the photographs are already on record and further the father of the opposite party no. 2, Ashok Agarwal had also lodged a first information report being case crime No. 1172 of 2015 in which and Ashok Agarwal, the father of the complainant is PW-2 in the said case and he has stated that the cheques were not to be presented in the bank but they were just for satisfaction to be accorded that the payments would be made and the copy of the first information report is already on record. Thus, the applicant seeks to summon Ashwani Gupta, Akash Sharma and Manish as their presence and statements would be relevant in order to determine the fact that the payments were already made and nothing remains due.

6. The said application on objection by the opposite party no. 2 came to be rejected on 19.08.2025 by the Court of Additional Session Judge, Court

no.14, Agra.

7. Questioning the same, the applicant has been filed the present application.

8. Learned counsel for the applicant has submitted that the court below has committed patent error of law apparent from the face of the record in rejecting the application so preferred under Section 391 Cr.P.C./ 432 BNSS, particularly, when under Section 391 Cr.P.C./ 432 BNSS itself provides that the appellate court may take further evidence or direct it to be taken during the pendency of the appeal. Submission is that it is not a situation wherein a new case is being carved out and other documents are sought to be injected, particularly, when the said documents are already on record and due to certain circumstances beyond the control and the comprehensions of the applicant, the said persons could not be summoned and, in case, they are not summoned and opportunity is not accorded to get the documents proved then it would be travesty of justice. He further submits that the court below got swayed with the fact that the dilatory tactics have been adopted, particularly, when it would be justifiable for the Court to give a precise and appropriate judgments if it summon the said persons. Reliance has been placed upon the decision of the Hon'ble Apex Court in ***Brig Sukhjeet Singh (Retd) MVC v. State of Uttar Pradesh & others; 2019 LawSuit (SC) 72.***

9. Learned State Law Officer while countering the submissions so raised by the learned counsel for the applicant has submitted that the present proceedings is nothing but grossest misuse of process of law, particularly, when earlier application under Section 391 Cr.P.C./ 432 BNSS came to be filed for getting the handwriting expert report opinion which came to be rejected, now a new application is being preferred which is nothing but an afterthought, particularly, when it was always open for the applicant to have preferred the said application during the trial prior to the order of the conviction.

10. I have heard learned counsel for the parties and gone through the records carefully.

11. Apparently, post lodging of the complaint under Section 138 of the N.I. Act on 27.09.2023, the trial court convicted the applicant against which an appeal came to be preferred in the year 2023. As per the recital contained in

para- 2 of the application under Section 391 Cr.P.C./ 432 BNSS the applicant has come up with a stand that he had preferred an application under Section 391 Cr.P.C./ 432 BNSS for getting an opinion of handwriting expert which came to be rejected.

12. On a pointed query being raised to the learned counsel for the applicant whether the said order was challenged, the answer is in negative.

13. Interestingly, though the appeal was preferred in the year 2023 and on 29.07.2025, the application under Section 391 Cr.P.C./ 432 BNSS came to be preferred for summoning Akash Sharma, Manish, Ashwani Gupta, Manager of the Canara Bank. The submission of the counsel for the applicant is that the said application needs to be allowed, particularly, when there are documents available on record which even prior to order of conviction were before the trial court and, in case, the said persons are summoned then it will make the entire controversy crystal clear that no amount is due and payable by the applicant.

14. Pertinently, Section 391 Cr.P.C./ 432 BNSS is akin to provisions contained under Order 41 Rule 27 of the CPC. Importantly, in the application under Section 391 Cr.P.C./ 432 BNSS in para-7, the applicant has averred as under:

"यह कि माननीय अवर न्यायालय द्वारा भी अपने निर्णय दिनांक 27.09.2023 में कहा है कि किन्तु अभियुक्त द्वारा सफाई साक्ष्य में परिवादी के किसी भी कर्मचारी को परीक्षित नहीं कराया है तथा ना ही किसी बैंक कर्मचारी को परीक्षित कराकर बैंक स्टेटमेन्ट की फोटोप्रतियों को साबित कराया है, यहां तक कि अभियुक्त द्वारा अपने केस को साबित करने के लिये स्वयं को भी साक्ष्य में परीक्षित नहीं कराया है। अतयव अभियुक्त के इन कथनों पर विश्वास करने का कोई स्पष्ट कारण प्रतीत नहीं होता है।" इससे स्पष्ट है कि उपरोक्त तथ्यों को साबित कराने के लिये साक्षी उपलब्ध थे और आज भी उपलब्ध है। लेकिन सहवन प्रार्थी अपीलार्थी उन साक्षियों को माननीय अवर न्यायालय के समक्ष प्रस्तुत नहीं कर सका था। जिस कारण अवर न्यायालय से निर्णय दिनांक 27.09.2023 तर्क संगत रूप से पारित नहीं हो सका। इसलिये दौरान अपील बैंक कर्मचारी को भी तर्क संगत निर्णय के लिये बुलाकर साक्ष्य लिया जाना आवश्यक है।"

15. Even otherwise, once it is not the case of the applicant then there was certain circumstances beyond the control and the comprehensions on account whereof he could not prefer an application summoning the said persons thus the said request for summoning the applicant cannot be allowed, particularly, it will amount to filling up the lacunas. The finding of the Additional Sessions Judge, Court No.14, Agra as

encapsuled dated 19.08.2025 reads as under:

"उक्त प्रार्थनापत्र के विरुद्ध जबाव कागज सं0-62ब प्रस्तुत करते हुए कथन किया गया है कि विधारण न्यायालय में अभियुक्त द्वारा परिवादी व परिवादी के गवाहन से विस्तृत जिरह की गयी जिनमे तथाकथित व्यक्तियों जिनकी साक्ष्य दर्ज कराने की याचना की है, के सन्बन्ध में भी जिरह की गयी है, जो विचारण न्यायालय की पत्रावली का भाग है। परिवादी साक्ष्य समाप्ति उपरान्त अभियुक्त को बचाव साक्ष्य का अवसर दिया गया। अभियुक्त की ओर से गवाहन सूची प्रस्तुत की गयी। अभियुक्त की ओर विचारण न्यायालय में प्रस्तुत गवाहन सूची दिनांकित 19.08.2022 में (1) सचिन शर्मा (2) पवन कुमार (3) अमित कुमार वशिष्ठ (4) दोपक शर्मा (5) कर्मचारी/अधिकारी केनरा बैंक (6) कर्मचारी/अधिकारी बैंक ऑफ बडौदा (7) अन्य साक्षीगण बाद देखने साक्ष्य व सुझाव परिवादी (8) श्री राकेश कुमार मित्तल एडवोकेट गवाह अंकित है, परन्तु अभियुक्त द्वारा दो गवाह DW-1 सचिन शर्मा व DW-2 अमित कुमार वशिष्ठ पेश किये गए हैं। अभियुक्त की गवाहन सूची ने प्रार्थना पत्र दिनांक 29.07.2025 में उल्लिखित गवाहन के नाम नहीं है। अपीलार्थी जिन गवाहन की साक्ष्य दर्ज कराने की याचना कर रहा है, जिनकी पूर्ण जानकारी विचारण के समय अभियुक्त को थी और विचारण न्यायालय द्वारा बचाव साक्ष्य का पूर्ण अवसर दिया, परन्तु अपीलार्थी द्वारा ऐसा कोई साक्ष्य प्रस्तुत नहीं किया गया। अपीलार्थी के प्रार्थना पत्र दिनांकित 29.07.2025 में स्वीकार है कि विचारण न्यायालय के समक्ष उसका उक्त साक्षी/साक्ष्य जिन्हें साबित कराना चाहता है उसके संज्ञान में थे। विचारण न्यायालय के समक्ष उपरोक्त साक्ष्य को ना प्रस्तुत करने का कोई युक्ति-युक्ति कारण अपीलार्थी द्वारा अपने प्रार्थना पत्र दिनांकित 29.07.2025 नहीं किया है। परिवादी द्वारा परिवाद वर्ष 2016 में प्रस्तुत किया था जिसे माननीय उच्च न्यायालय के आदेश अनुसार शीघ्र निस्तारण करना था परन्तु अभियुक्त द्वारा विचारण के शीघ्र निस्तारण में सहयोग नहीं किया जिस कारण परिवाद का निस्तारण 7 वर्ष बाद 2023 में हुआ। उक्त अपील को दाखिल हुए दो वर्ष हो चुके हैं। जिसके निस्तारण में अपीलार्थी द्वारा सहयोग नहीं किया जा रहा है पूर्व में भी अभियुक्त का प्रार्थना पत्र धारा 391 द.प्र.सं. माननीय सत्र न्यायालय द्वारा निरस्त किया गया है। विधि का स्थापित सिद्धान्त है कि माननीय उच्चतम न्यायालय व माननीय उच्च न्यायालय द्वारा विधि व्यवस्थाओं में अवधारित किया गया है कि *Lacuna Fill Up* करने हेतु साक्षी को तलब नहीं किया जाना चाहिए। अपीलार्थी का प्रार्थना पत्र आधारहीन है व बलहीन है जो अपील के निस्तारण में विलम्ब करने की नीयत से दिया गया है। अतः प्रार्थनापत्र निरस्त किये जाने की याचना की गयी।

सुना तथा अवलोकन किया।

पत्रावली के अवलोकन से विदित होता है कि प्रस्तुत प्रार्थनापत्र के माध्यम से अपीलार्थी द्वारा अतिरिक्त साक्ष्य में आकाश शर्मा, मनीष व अश्वनी गुप्ता व "बैंक मैनेजर का साक्ष्य अंकित कराये जाने की याचना की गयी है।

पुत्रावली के अवलोकन से स्पष्ट है कि विद्वान अवर न्यायालय द्वारा पर्याप्त अवसर दिये जाने के बावजूद भी अपीलार्थी द्वारा विद्वान अवर न्यायालय के समक्ष उपरोक्त वर्णित व्यक्तियों का साक्ष्य अंकित नहीं कराया गया है। विधि का यह सुस्थापित सिद्धान्त है कि निर्णय से पूर्व भी धारा 311 द०प्र०सं० के अंतर्गत प्रार्थनापत्र प्रस्तुत कर साक्षीगण को बुलाया जा सकता है। परन्तु अपीलार्थी द्वारा विद्वान अवर न्यायालय के समक्ष इस प्रकार का कोई आवेदन नहीं किया गया। विद्वान अवर न्यायालय द्वारा अपने निर्णय में इस संबंध में अपना मत

भी व्यक्त किया गया है। अपीलार्थी द्वारा अपने प्रार्थनापत्र में इस तथ्य को स्वीकार किया गया है कि विचारण न्यायालय के समक्ष उसका उक्त साक्षी/ साक्ष्य जिन्हें साबित कराना चाहता है उसके संज्ञान में थे। यहां यह भी उल्लेखनीय है कि प्रस्तुत प्रकरण में चेक देने के समय की "जी घटना बतायी गयी है, उस समय परिवादी एवं अभियुक्त के मध्य संधि थी, ऐसे में कथित व्यक्तियों द्वारा सेल्फ के चेक का भुगतान कर रूपया किसे प्रदान किया गया, इस स्तर पर उक्त के संबंध में कोई स्पष्टता नहीं की जा सकती। अतः अपीलार्थी द्वारा प्रस्तुत उपरोक्त प्रार्थनापत्र स्वीकार किये जाने योग्य नहीं है।

अपीलार्थी की ओर से माननीय उच्चतम न्यायालय की विधि व्यवस्था *State of Gujarat Vs. Mohanlal Jitmalji & Anr. 1987 AIR SC 1321* प्रस्तुत की गयी है, जिसमें माननीय उच्चतम न्यायालय द्वारा यह अवधारित किया गया है कि "*Rejection of request for additional evidence on ground of delay held not justified if the applicant was not responsible for the delay in the proceedings.*" अपीलार्थी की ओर से माननीय उच्चतम न्यायालय की ही विधि व्यवस्था *Rambhau Vs. State of Maharashtra, 2001 AIR SC 2120* प्रस्तुत की "गयी है, जिसमें माननीय उच्चतम न्यायालय द्वारा यह अवधारित किया गया है कि "*The order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it.*" परन्तु यदि विद्वान अवर न्यायालय की पत्रावली एवं अपील की पत्रावली का सम्यक अवलोकन किया जाये तो यह स्पष्ट होता है कि स्वयं अपीलार्थी द्वारा ही बार-बार प्रस्तुत मामले में विलम्ब कारित किया गया है, उसके द्वारा ऐसा कोई स्पष्ट साक्ष्य न्यायालय के समक्ष प्रस्तुत नहीं किया गया है, जिससे यह स्पष्ट हो सके कि परिवादी/ विपक्षी सं०-2 द्वारा किसी प्रकार का विलम्ब कारित किया गया हो तथा अपीलार्थी को साक्ष्य प्रस्तुत करने हेतु पर्याप्त अवसर प्रदान न किया गया हो। इस प्रकार अपीलार्थी की ओर से प्रस्तुत माननीय उच्चतम न्यायालय की उपरोक्त विधि व्यवस्था अपीलार्थी के ही कथनों के विपरीत हैं, जिनका कोई लाभ अपीलार्थी को नहीं मिलता।

प्रस्तुत प्रकरण माननीय उच्च न्यायालय द्वारा शीघ्र निस्तारण हेतु निदेशित था, परन्तु अपीलार्थी/ अभियुक्त द्वारा उक्त प्रकरण के निस्तारण में विभिन्न तरीकों से विलम्ब कारित किया गया। उक्त अपील में भी अपीलार्थी द्वारा भिन्न-भिन्न प्रकार के प्रार्थनापत्र प्रस्तुत कर विलम्ब कारित किया जा रहा है। अतः ऐसा प्रतीत हो रहा है कि अपीलार्थी येन-केन प्रकारेण प्रस्तुत अपील को लम्बित रखना चाहता है।

आदेश

अपीलार्थी द्वारा प्रस्तुत प्रार्थनापत्र 55ब निरस्त किया जाता है। पत्रावली वास्ते बहस दिनांक 21.08.2025 को पेश हो।"

16. Apparently, the applicant during the proceedings before the trial court prior to conviction had submitted the list of the witnesses on 19.08.2022 of (a) Sachin Sharma, (b) Pawan Kumar, (c) Amit Kumar Vashistha, (d) Deepak Verma, (e) Officer/ employees of Canara Bank, (f) Officer/ employee of Bank of Baroda, (g) other witnesses who would be required and (h) Rakesh Kumar Mittal Advocate. However, the applicant produced only

DW-1, Sachin Sharma and DW-2, Amit Kumar Mishra. Incidentally in the said list, the names of the said proposed witnesses does not find place. As a matter of fact, it is also not the case of the applicant that he had no knowledge about the factum of existence of the said witnesses and relevance merely making a bald recital in the application seeking summoning of the said proposed witnesses without any justification that too at an appellate stage in the proceedings under Section 391 Cr.P.C./ 432 BNSS would not suffice as what would be relevant would be a circumstances to show that even otherwise due to certain circumstances beyond the control and comprehension, the application for summoning the applicant could not be filed.

17. Nonetheless, the appeal stood preferred in the year 2023 and the application under Section 391 Cr.P.C./ 432 BNSS came to be preferred on 29.07.2025.

18. In the opinion of the Court, the present application is nothing but a device to cure the lacuna. There is another noticeable feature that an application under Section 391 Cr.P.C./ 432 BNSS came to be preferred for opinion of hand writing expert and the said application came to be rejected which has not been subject matter of challenge, thus, preferring of another application on different grounds is not liable to be accepted in the given facts and circumstances of the case.

19. In a recent judgment, the Hon'ble Apex Court in the case of ***Ajitsinh Chehuji Rathod Vs. State of Gujarat and Another*** 2024 SCC OnLine SC 77 has held as under:-

“17. Thus, we are of the view that if at all, the appellant was desirous of proving that the signatures as appearing on the cheque issued from his account were not genuine, then he could have procured a certified copy of his specimen signatures from the Bank and a request could have been made to summon the concerned Bank official in defence for giving evidence regarding the genuineness or otherwise of the signature on the cheque.

18. However, despite having opportunity, the accused appellant did not put any question to the bank official examined in defence for establishing his plea of purported mismatch of signature on the cheque in question and hence, we are of the firm opinion

that the appellate Court was not required to come to the aid and assistance of the appellant for collecting defence evidence at his behest. The presumptions under the NI Act albeit rebuttable operate in favour of the complainant. Hence, it is for the accused to rebut such presumptions by leading appropriate defence evidence and the Court cannot be expected to assist the accused to collect evidence on his behalf.”

16. Thus, it is clear that Section 391 of Cr.P.C. cannot be pressed to come to rescue of the accused to fill up the lacuna in his defence and to come to aid and assistance for collecting defence evidence for the accused once the accused had opportunity to do the needful during the course of trial.”

20. So far as the judgment in ***Brig Sukhjeet Singh (Retd) MVC (supra)*** concerned, the same is not applicable in the facts of the case and is distinguishable.

21. The Court finds that the grounds on the basis whereof prayer has been made under Section 391 Cr.P.C./ 432 BNSS is not justifiable and can be said to be in accordance with law. Accordingly, no case is made out for interference. The application stands **rejected**.

(Vikas Budhwar,J.)

September 24, 2025

A. Prajapati