

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.11090 OF 2025

C/W

CRIMINAL PETITION No.11091 OF 2025

IN CRIMINAL PETITION No.11090 OF 2025

BETWEEN:

SRI P.VEERA KUMAR
S/O SRI P.SATHYANARAYANA,
AGED ABOUT 68 YEARS,
RESIDING AT NO.410,
2ND BLOCK, HRBR LAYOUT,
KALYANANAGAR,
BENGALURU – 560 043.

... PETITIONER

(BY SRI MAHESH B.J., ADVOCATE)

AND:

MR.D.SREENIVAS KRISHNA
S/O LATE DR.VIDYAKAR,
AGED ABOUT 56 YEARS,
RESIDING AT NO.28/3,
PROMENADE ROAD,
FRAZER TOWN,

BENGALURU – 560 005.

... RESPONDENT

(BY SRI VIVEKANANDA N., ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., / UNDER SECTION 528 OF BNSS, 2023 PRAYING TO QUASH/SET ASIDE THE ORDER DATED 19.07.2025 PASSED BY THE 34TH ADDL. CJM, MAYOHALL UNIT, AT BANGALORE, IN C.C.NO.50180/2019 ON APPLICATION FILED BY THE COMPLAINANT/RESPONDENT U/S. 91 OF CR.P.C., CONSEQUENTLY DISMISS THE APPLICATION.

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., / UNDER SECTION 528 OF BNSS, 2023 PRAYING TO PRAYING TO QUASH/SET ASIDE THE ORDER DATED 19.07.2025 PASSED BY THE 34TH ADDL.CMM, MAYOHALL UNIT, AT BANGALORE IN CC NO.50179/2019 ON APPLICATION FILED BY THE COMPLAINT/RESPONDENT U/S 91 OF CR.P.C., CONSEQUENTLY DISMISS THE APPLICATION.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner and the respondent are common in both these cases. The issue projected is also common. Therefore, they are taken up together and considered by this common order.

2. The petitioner-accused is before the Court calling in question an order of the concerned Court dated 19-07-2025, whereby the concerned Court permits amendment to the complaint allowing an application under Section 91 of the CrPC.

3. Skeletal facts necessary for consideration of the issue in the *lis* are as follows:

3.1. The petitioner is the accused and respondent, the complainant, in both the cases. The two have a transaction. The transaction having gone wrong, the complainant, walks to the doors of the learned Magistrate under Section 200 of CrPC for offence punishable under Section 138 of the Negotiable Instruments Act, 1881 on an event of the two cheques issued in favour of the complainant from the same account, for ₹ 20,00,000/- and ₹ 20,14,000/- getting dishonoured. On 03-01-2019, the sworn statement of the complainant comes to be recorded in CC Nos.50180 of 2019 and 50179 of 2019 respectively. 3 years pass by. The trial in both the cases stood concluded and the parties tender their oral arguments followed by written arguments. The matters were posted for pronouncement of judgment and continued to be adjourned for its judgment on subsequent dates. On 07-04-2025, the complainant files an application under Section 91 of the CrPC in both the cases seeking rectification of an error by transposing the documents attached to the sworn statements in

each of the cases. The application was filed in the wake of the cheques in both the cases getting interchanged. The accused then would file objections to the said applications on the score that the application was filed at a belated stage when the matter was posted for its judgment and it was not maintainable.

3.2. The concerned Court after hearing the parties, considering the objections, allows the applications holding that mixing-up of the records had occurred inadvertently without any intention to cause prejudice by the complainant and accordingly permits rectification of the error. It is the common order passed in both the cases answering an application under Section 91 of the CrPC, the accused is before the Court in the subject petitions. The co-ordinate bench of the Court, owing to the fact that the matter would require consideration, had passed the following order on 30-07-2025. The order passed in one of the cases in CrI.P.No.11090 of 2025 reads as follows:

“Heard learned counsel for the petitioner.

A significant and interesting question arises for consideration before this Court, namely, whether the lapse on the part of the complainant in failing to tender the correct cheques in two independent private complaints affects the

maintainability of the proceedings initiated against the petitioner/accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

The objection now raised by the petitioner/accused is that, although the private complaint filed in PCR No.57717/2018 pertains to cheque bearing No.226865, the complainant has erroneously produced the cheque bearing No.226864, which is actually the subject matter of the connected private complaint. It appears from the record that the complainant, after recording the sworn statement, continued to prosecute the matter, and it was only when the case was listed for judgment that the error in production of the cheques in the respective complaints was noticed. Consequently, the complainant has filed an application seeking permission to swap the documents between the two complaints.

In light of the above, the matter requires examination by this Court.

Accordingly, the Registrar (Judicial) is directed to forthwith telephonically communicate this interim order to the concerned Trial Court and ensure that the judgment is not pronounced in the matter until the next date of hearing.

Further, the proceedings in C.C. No.50180/2019 pending on the file of the 34th Additional Chief Metropolitan Magistrate, Mayohall Unit, Bengaluru, are hereby stayed until the next date of hearing.

Issue emergent notice to the respondent.

I.A.No.1/2025 is disposed off accordingly.

Learned counsel for the petitioner is hereby directed to simultaneously serve copy of the notice on the learned counsel appearing for the complainant before the Trial Court and shall also intimate the grant of interim order and next date of hearing.

Re-list this matter in admission on 20.08.2025."

The interim order granted in both the cases is subsisting even today and therefore the proceedings before the concerned Court are not taken to its logical conclusion.

4. Heard Sri Mahesh B. J., learned counsel appearing for petitioner and Sri Vivekananda N, learned counsel appearing for the respondent in both the cases.

5. The learned counsel appearing for the petitioner-accused would submit that the concerned Court has grossly erred in allowing the application under Section 91 of the CrPC at such a belated stage when the matter was reserved for its orders. The learned counsel submits it was the mistake of the complainant in swapping the cheques even at the time of recording of the sworn statement. Once the sworn statement stood recorded, the learned counsel submits that the rectification would amount to altering the entire process, which would not be permitted.

6. Contrariwise, the learned counsel appearing for the respondent would vehemently refute the submission, contending that what is rectified by the concerned Court is an error of swapping

of the cheques in each of the cases, as the cheque that had to be attached in a particular CC had been attached to a different CC, since the transaction between the two were common in both the cases, except the quantum of the amount. He would seek dismissal of the petitions and a direction to the concerned Court to conclude the proceedings and to deliver its judgment in the light of the impugned order.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, the following issue would arise for consideration:

“Whether on an application under Section 91 of the CrPC, a complaint filed could be rectified by a process of rectification?

8. The afore-narrated facts, dates and link in the chain of events are all a matter of record. The transaction between the petitioner-accused and the complainant, are 2 in number, one, which leads to a cheque that is issued for an amount of ₹ 20,00,000/- bearing No.226864 and the other bearing No.226865

for ₹20,14,000/-. Two separate proceedings are initiated on dishonour of the said cheques, one in CC.No.50180 of 2019 and the other in C.C.No.50179 of 2019. The complaints were separately filed. The narration in the complaint is clear that the respective cheques are the subject matter of respective complaints. The anomaly creeps in when the sworn statement is recorded. At the time of recording of the sworn statement, the complainant projects the cheque which had to be in CC 50180 of 2019 has become part of CC 50179 of 2009 and vice versa. Therefore there is swapping of the cheques.

9. It must be noticed that the signature on the cheque is admitted. The petitioner-accused is now wanting to take advantage of this technicality, if not hyper-technicality of an inadvertent human error at the time of recording of the sworn statement, of the cheques being swapped. By a process of rectification, the complainant sought the cheques to be appropriately placed in the appropriate C.Cs prior to passing of the judgment. This is allowed by the following order:

"ORDER

The learned counsel for Complainant has filed application for rectification of error in the both complaints by mixing the records of the cases.

2. On the other hand, the learned counsel for Accused filed written objections contending that at the last stage of the complaint, present application is not maintainable and the Complainant has not filed the present application with proper provision. It is further submitted that, at the time of recording of sworn statement, all the documents are exhibits and cognizance taken place and cases registered against the Accused. It is further submitted that, even in the written arguments filed by the Accused, the Accused has taken the said error, the Complainant has not taken steps for the said error. Hence, at this belated stage, application is not maintainable. Hence, prayed for dismissal of the application.

3. Heard both sides and perused the material on record.

4. Admittedly, the Complainant has filed two separate complaints against the same Accused for the offence punishable u/Sec.138 of N.I. Act. In the present both cases the Complainant and Accused are one and same and both complaints are filed on the same date and on the same date sworn statement were recorded. While recording of sworn statement and at the time of exhibiting of documents, both cases records are mixed up. Some documents and sworn statements are exchanged in both cases. It is pertaining to note that the said error is not intentional one. Due to oversight the said error was occurred. On mixing of records/documents/sworn statement the Complainant will not suffer. Hence, the said error was curable in the interest of justice and equity. Hence, the Complainant is directed to rectify the error. Hence, I proceed to pass the following;

ORDER

The application filed by the Complainant, is hereby allowed.

The Complainant is directed to rectify the error.

Call on 30-07-2025"

Whether the order suffers from want of tenability is necessary to be noticed. The purport of Section 91 of the CrPC need not detain this Court for long or delve deep into the matter. Section 91 of the CrPC is akin to Section 311 of the CrPC, where production of document or additional material is permissible.

10.1. The Apex Court in **STATE OF ORISSA v. DEBENDRA NATH PADHI**¹ observes as follows:

"....

25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being

¹ (2005) 1 SCC 568

necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.

26. Reliance on behalf of the accused was placed on some observations made in the case of *Om Parkash Sharma v. CBI* [(2000) 5 SCC 679 : 2000 SCC (Cri) 1014] . In that case the application filed by the accused for summoning and production of documents was rejected by the Special Judge and that order was affirmed by the High Court. Challenging those orders before this Court, reliance was placed on behalf of the accused upon *Satish Mehra case* [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] . The contentions based on *Satish Mehra case* [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] have been noticed in para 4 as under: (SCC p. 682)

"4. The learned counsel for the appellant reiterated the stand taken before the courts below with great vehemence by inviting our attention to the decision of this Court reported in *Satish Mehra v. Delhi Admn.* [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] laying emphasis on the fact that the very learned Judge in the High Court has taken a different view in such matters, in the decision reported in *Ashok Kaushik v. State* [(1999) 49 DRJ 202] . Mr Altaf Ahmed, the learned ASG for the respondents not only contended that the decisions relied upon for the appellants would not justify the claim of the appellant in this case, at this stage, but also invited, extensively our attention to the exercise undertaken by the courts below to find out the relevance, desirability and necessity of those documents as well as the need

for issuing any such directions as claimed at that stage and consequently there was no justification whatsoever, to intervene by an interference at the present stage of the proceedings.”

27. Insofar as Section 91 is concerned, it was rightly held that the width of the powers of that section was unlimited but there were inbuilt, inherent limitations as to the stage or point of time of its exercise, commensurate with the nature of proceedings as also the compulsions of necessity and desirability, to fulfil the task or achieve the object. Before the trial court the stage was to find out whether there was sufficient ground for proceeding to the next stage against the accused. The application filed by the accused under Section 91 of the Code for summoning and production of document was dismissed and order was upheld by the High Court and this Court. But observations were made in para 6 to the effect that if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to look into the material so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time, these observations are clearly obiter dicta and in any case of no consequence in view of conclusion reached by us hereinbefore. Further, the observations cannot be understood to mean that the accused has a right to produce any document at the stage of framing of charge having regard to the clear mandate of Sections 227 and 228 in Chapter 18 and Sections 239 and 240 in Chapter 19.

28. We are of the view that jurisdiction under Section 91 of the Code when invoked by the accused, the necessity and desirability would have to be seen by the court in the context of the purpose — investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry.”

The Apex Court holds that the necessity and desirability is not to be judged in the abstract, but must be examined with reference to the

stage at which the prayer for production is made and the party at whose instance it is made.

10.2. The Apex Court prior to the said judgment in **P. CHHAGANLAL DAGA v. M. SANJAY SHAW**² considers whether a lacuna or an error can be corrected and holds as follows:

"....

5. In *Rajendra Prasad v. Narcotic Cell* [(1999) 6 SCC 110 : 1999 SCC (Cri) 1062] this Court has explained what is meant by lacuna in the prosecution case. The following passage of the said decision will be apposite in this contest: (SCC p. 113, para 7)

"7. It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act, 1872 by saying that the court could not 'fill the lacuna in the prosecution case'. A lacuna in the prosecution is not to be equated with the fallout of an oversight committed by a Public Prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage 'to err is human' is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such laches or mistakes during the conducting of a case cannot be understood as a lacuna which a court cannot fill up."

6. In deciding so, this Court has taken into account some of the earlier decisions of this Court including *Mohanlal Shamji Soni v. Union of India* [1991 Supp (1) SCC 271 : 1991 SCC (Cri) 595] . In the said decision this Court had observed that the power to receive evidence in exercise of Section 311 of

² (2003) 11 SCC 486

the Code could be exercised "even if evidence on both sides is closed" and such jurisdiction of the Court is dictated by the exigency of the situation and fair play. The only factor which should govern the court in exercise of powers under Section 311 should be whether such material is essential for the just decision of the case. Even a reading of Section 311 of the Code would show that Parliament has studied the said provision lavishly with the word "any" at different places. This would also indicate the widest range of power conferred on the court in that matter. It is so stated by this Court in *Ram Chander v. State of Haryana* [(1981) 3 SCC 191 : 1981 SCC (Cri) 683]."

Though the Apex Court was considering interpretation of Section 311 of CrPC., the finding would become applicable to an application under Section 91 of the kind that is projected in the case at hand.

10.3. Long before the two judgments, the Apex Court in **RAJENDRA PRASAD v. NARCOTIC CELL THROUGH ITS OFFICER IN CHARGE, DELHI**³ holds as follows:

"....

7. It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act, 1872 by saying that the court could not "fill the lacuna in the prosecution case". **A lacuna in the prosecution is not to be equated with the fallout of an oversight committed by a Public Prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage "to err is human" is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any**

³ (1999) 6 SCC 110

such laches or mistakes during the conducting of a case cannot be understood as a lacuna which a court cannot fill up.

8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better."

The Apex Court holds that an inadvertent oversight or a mistake in the conduct of trial is not an irreparable lacuna. A lacuna denotes an inherent weakness in the prosecution case, whereas an omission arising from inadvertence may be permitted to be rectified, as no party should take advantage of an inadvertent error in a trial.

10.4. The High Court of Rajasthan in **YASHWANT SOLANKI v. STATE OF RAJASTHAN**⁴ interpreting Section 94 of the BNSS, Section 91 of the earlier regime CrPC, holds that where a document sought is necessary or desirable, it should be permitted. It observes as follows:

⁴ **S.B. Criminal Misc (Pet.) No.9056/2025, decided on 12-02-2026**

"... .."

The power to summon documents at the stage of trial is circumscribed by the requirement that the Court must be satisfied about the necessity and desirability of such production for a just decision of the case.

Reliance can be placed upon the judgment of the Hon'ble Supreme Court in ***State of Orissa v. Debendra Nath Padhi (supra)***

"25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession

to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.

28. We are of the view that jurisdiction under Section 91 of the Code when invoked by accused the necessity and desirability would have to be seen by the Court in the context of the purpose investigation, Inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry."

The Hon'ble Supreme Court in the aforesaid Judgment has held that the expression "necessary or desirable" occurring in Section 91 CrPC (now Section 94 BNSS) has to be examined with reference to the stage at which such a request is made. The Court further held that the accused cannot invoke the said provision at the stage of framing of charge to produce defence material. However, once the trial has commenced and the matter has progressed to the stage of recording of evidence, the Court is competent to exercise its powers under Section 94 BNSS if the document sought is necessary or desirable for a just decision of the case. In such circumstances, the Court may summon the relevant material in exercise of its judicial discretion depending upon the facts and circumstances of each case.

This issue was considered by the Coordinate Bench of this Court in the case of ***Ratti Vs. State of Rajasthan & Ors. (S.B. Criminal Misc. Petition No.3842/2020 decided on 01.02.2024)***. The Court observed as under :-

"17. Thus, in such factual backdrop of the present case and considering the nature of things, sought to be collected/summoned, it was not justified for the trial Court to dismiss or defer the application filed by the accused person, merely on the ground that same can be considered only at the stage of defence evidence of accused persons and not prior thereto. More so, when the language of Section 91 CrPC itself does not put any bar for the accused person to invoke provision of Section 91 CrPC and as per ratio decidendi expounded by the Division Bench of Madhya Pradesh High Court in case of Umesh Tiwari (supra), the accused can invoke power

and jurisdiction of Court, Section 91 CrPC after filing of the charge-sheet by the police before the Court. Thus, this Court does not find any illegality or jurisdictional error in exercising powers by the trial Court to direct to produce such material before the Court and the impugned order dated 27.02.2020 does not warrant any interference by this Court, within scope of Section 482 CrPC. The sustenance of impugned order neither leads to any illegality nor the impugned order is found, against mandate of law nor same leads to any miscarriage of justice. Undisputedly, the State/prosecution has not challenged the impugned order, meaning thereby it is not averse to produce the material as directed by the learned trial Court."

It will be relevant to state here that Section 94 of the BNSS, 2023 is pari materia to Section 91 Cr.P.C., and therefore the judicial principles governing Section 91 CrPC would equally apply while exercising powers under Section 94 BNSS.

In the present matter, the departmental proceedings arise out of the same incident which forms the basis of the NDPS prosecution presently pending before the learned Special Court. The petitioner has been arraigned as an accused in the criminal case and, in respect of the very same incident, disciplinary proceedings are also pending against him, wherein the statements of the seizure officers, members of the patrol team and witnesses have been recorded. Such material forming part of the departmental inquiry has a direct bearing on the credibility and reliability of the prosecution witnesses, whose statements have been recorded in the departmental proceedings. The said material is therefore relevant and necessary for the petitioner to effectively put forth his defence and to confront the prosecution witnesses during cross-examination. Denial of access to such material would seriously prejudice the defence of the petitioner and would deprive him of a fair opportunity to defend himself in the criminal trial.

It is well settled that a fair trial is an integral facet of Article 21 of the Constitution of India and includes the right of

the accused to effectively cross-examine the prosecution witnesses and to rely upon relevant material which may assist in his defence. Any denial of access to such material would therefore amount to a violation of the principles of a fair and just trial. The petitioner, being an accused, is entitled to effectively defend himself in the criminal proceedings, which necessarily includes the right to seek production of relevant documents and to cross-examine the prosecution witnesses. Such a right cannot be curtailed on mere administrative considerations.

Further, the trial in the present case has already reached the stage of recording of prosecution evidence. The documents sought to be summoned are for the purpose of confronting and contradicting the said witnesses with their previous statements during the course of cross-examination. Hence, it cannot be said that it is not the appropriate stage to call for the relevant documents and the same should be deferred till the stage of defence is reached, as the same would defeat the very purpose of summoning the required documents. Further, the language of Section 94 BNSS itself does not put any such bar and the discretion is to be exercised by the court considering the stage of trial.

In view of the aforesaid discussion and the settled principles of law, this Court finds merit in the present petition. **The documents/record sought by the petitioner by way of an application under Section 94 BNSS are necessary and desirable for the just and proper adjudication of the present trial and therefore the application deserves acceptance."**

10.5. Likewise, the High Court of Delhi in **CENTRAL BUREAU OF INVESTIGATION v. R. VASUDEVAN**⁵ observes as follows:

"....

⁵ 2024 SCC OnLine Del 3952

53. It also needs to be adverted to that any document or other thing envisaged under Section 91 CrPC can be ordered to be produced for "*the purpose of investigation, inquiry, trial or other proceedings under the Code*". In the context of trial, pendency of the trial is a pre-requisite for ordering production of any document therein. A perusal of sub-section (1) of Section 353 CrPC shows that the stage for pronouncement of judgment in a criminal case comes after the termination of trial. Therefore, at this stage giving a direction or permission to file additional documents, when the trial has concluded and the case is fixed for pronouncement of judgment, will not be in the interest of justice especially when it is the lack of alacrity on part of the petitioner/CBI which is responsible for this situation."

10.6. A coordinate bench of this Court in **M/S INDIAN POTASH LIMITED v. S.M. SADALAGE**⁶ holds as follows:

"....

6. Learned counsel for the appellant argued that the impugned judgment of acquittal is illegal, perverse and needs to be set aside. Learned counsel argued that the appellant/complainant has satisfied all the ingredients of Section 138 of N.I. Act. The judgment of acquittal is on technicalities as the trial Court found that documents are interchanged with another case in C.C. No.28722/2006 between the same parties in respect of other cheque issued. Therefore, the trial Court's finding on technical ground is erroneous. The Appellate Court has got ample power to appreciate the documentary evidence available in both the cases. The inference drawn are erroneous, it is only a technical ground and not on merits. Therefore, the acquittal has resulted in miscarriage of justice.

....

⁶ Crl.A.No. 1141 OF 2012, decided on 29-03-2023

23. Therefore, evidence filed by the complainant by way of affidavit and contents of complaint does not corroborate with the documentary evidence produced in this case. The complaint is based on different cheque and the amount mentioned in the complaint is also different. I have also perused Ex.P2-cheque which is dated 27.10.2005 issued for Rs.1,00,00,000/- and Ex.P3/the bank memo is also for the same amount. The legal notice is also for Rs.1,00,00,000/-. The reply notice at Ex.P7 wherein the contents of notice is denied. Though the appellant has produced number of documents, but as the complaint averments and affidavit of complainant and the documents produced in this case are inconsistent with each other, the learned JMFC has dismissed the complaint. Therefore, the evidence filed by the complainant by way of affidavit and the averments in the complaint are inconsistent with the documents produced by the complainant particularly cheque, bank endorsement are not in respect of cheque number or amount mentioned in the written complaint.

24. As stated by the learned counsel for the appellant, the complainant has also filed another private complaint against the same respondents/accused in PCR No.5736/2005 in respect of dishonour of cheque bearing No.428101 dated 25.10.2005 for Rs.83,30,100.61/-. Therefore, he submits that due to inadvertence or without noticing the same, the documents in this case are produced in that case and the documents in that case are produced in this case. **The contention of learned counsel is that Court can set right that mistake by remanding the matter. In this regard he relied on the decision of Gujarat High Court in the case of *Dilipbhai Bhagwandas Aashwani Propreitor Pappu Finance Vs. State of Gujarat and Others - 2019 SCC Online Guj 6621* wherein it is held that if there were two different proceedings between the same parties and due to inadvertent mistake on the part of learned advocate who was appearing for the appellant-original complainant before the learned Magistrate of intermingling statutory notice as well as cheques and therefore it was not matching with the pleadings, the learned Magistrate acquitted the accused. The Court remanded the matter. It is true that the documents are interchanged in this case also, but here the evidence on oath is totally inconsistent with the contents of document and written complaint. It**

is nothing but total negligence on the part of the complainant and carelessness of complainant in filing the examination-in-chief affidavit. When the appellant is a company and it is represented by its officials, before filing the affidavit they must verify or atleast at the time of marking of documents, the documents should be verified by the concerned.

25. It is to be stated here that in view of filing of evidence by way of examination-in-chief affidavit, mechanically, the affidavit evidence is filed without verifying whether same pertains to this case or not. Whatever the documents produced along with complaint are mechanically marked without verifying them. Infact it is duty of the Court also at the time of taking cognizance itself to verify as to whether the documents produced before the Court along with the complaint makes out a prima facie case for taking cognizance and to register the case.

26. I have perused the order sheet of the trial court. It is evident that the complaint was filed belatedly and the delay was condoned under Section 142(b) of N.I Act. The learned JMFC by perusing the allegations of complainant stated that they constitute an offence under Section 138 of N.I. Act, hence, cognizance is taken and directed to register the case as PCR. The very order itself shows that mechanically, the learned JMFC has registered the case without verifying the documents as they are not tallying with written complaint. If at all the learned JMFC has verified the documents at the time of taking cognizance itself in the year 2006, the complainant could have taken appropriate steps. But the said documents were not noticed, though it is mentioned in the order that documents are perused. The documents shows that they are not at all perused and the case proceeded with trial by the Court. It is very unfortunate that even the complaint is filed based on these documents which are not concerned to this case and the same were also marked without verifying them. Therefore, the learned JMFC finding cannot be said as either illegal or perverse. When the complaint, evidence filed by way of affidavit and the documentary evidence

are inconsistent with each other, the Court has no other way but to dismiss the complaint.

27. It is also evident that the accused company is not made as party. At this stage, this Court cannot give any such direction to implead the company as a party to case by remanding the matter as same is not permissible, in view of decision of Hon'ble Supreme Court in the case of **Himanshu Vs. B.Shivamurthy and another - (2019) 3 SCC 797** wherein the Hon'ble Supreme Court has considered and discussed regarding the Sections 138 and 141 of N.I. Act and necessary conditions to be complied with for constituting an offence under Section 138 of N.I. Act, in general and against company and its directors/officers and where necessary conditions under Section 138 of N.I. Act are not complied with, company cannot subsequently be arraigned as accused in proceedings under Section 138 of N.I. Act. The Hon'ble Supreme Court has referred to its earlier decision in the case of **Anitha Hada's case**. In that case also, the complaint was lodged for dishonour of cheque dated 26.12.2003 and it was returned with an endorsement funds insufficient. The complainant therein issued a notice to the appellant and the same was also served. Upon the failure of the appellant to pay the amount due under the cheque, a complaint was instituted. The Civil Judge, Junior Division and JMFC Tiptur took cognizance on 06.7.2004 and issued summons to the appellant. Against the same, the appellant instituted a petition under Section 482 of Cr.P.C before this Court. This Court held that on meticulously going through the cheque dated 23.12.2005, it discloses that the cheque was issued by one of the Directors of the company and that was not a cheque issued by any person in his individual capacity. If that is accepted the complaint should have been against the company and its Directors and not against the accused. The said petition was dismissed by this Court. The Hon'ble Supreme Court referred to **Anitha Hada's case** supra and at paragraph No.7 it is held as under:

"7. The first submission on behalf of the appellant is no longer res integra. A decision of a three-Judge Bench of this Court in Aneeta Hada Vs. Godfather Travels & Tours (P) Ltd. governs the area of dispute. The issue which fell for consideration was whether an authorized signatory of a company would be liable for

prosecution under Section 138 of the Negotiable Instruments Act, 1881 without the company being arraigned as an accused. The three-Judge Bench held thus:

58. Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the Section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a director is indicted.

In similar terms, the Court further held:

59. In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself.

28. Further regarding to Section 141 of N.I. Act it is held at paragraph Nos. 11, 12, 13 as under:

11. In the present case, the record before the Court indicates that the cheque was drawn by the appellant for Lakshmi Cement and Ceramics Industries Ltd., as its Director. A notice of demand was served only on the appellant. The complaint was lodged only against the appellant without arraigning the company as an accused.

12. The provisions of Section 141 postulate that if the person committing an offence under Section 138 is a

company, every person, who at the time when the offence was committed was in charge of or was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished.

13. In the absence of the company being arraigned as an accused, a complaint against the appellant was therefore not maintainable. The appellant had signed the cheque as a Director of the company and for and on its behalf. Moreover, in the absence of a notice of demand being served on the company and without compliance with the proviso to Section 138, the High Court was in error in holding that the company could now be arraigned as an accused.

29. Therefore, in view of the principles stated in above decision, even this Court cannot remand the matter at this stage, even if there is any such material to remand the matter. But no purpose would be served to remand the matter, as company is admittedly not made as party.

30. It is the settled principles of law that this court being the Appellate Court will not interfere with the judgment of acquittal, unless it is shown that the judgment of acquittal is perverse, illegal and not based on proper appreciation of evidence on record and it has resulted in miscarriage of justice.

31. In the light of these principles, if the judgment of Trial Court, the case of the complainant, both oral and documentary evidence are perused, it is evident that they are totally inconsistent with each other. The complainant himself should be blamed for not filing proper evidence and not producing the proper documents. Therefore, at this length of time, no purpose would be served by remanding the matter in view of decision in the case of *Himanhu referred supra*. Therefore, viewed from any angle, the appeal being devoid of merit, is liable to be dismissed."

(Emphasis supplied at each instance)

In the light of the judgments rendered by the Apex Court, the High Court of Rajasthan, High Court Delhi and that of this Court, the unmistakable inference is that the order of the concerned Court does not suffer from want of tenability. The accused cannot be permitted to take advantage of an inadvertent error of the complainant in swapping the cheques in both the cases, as the transaction is common, the amount differed only to an extent of ₹ 14,000/-. Cheques that were handed over were for an amount of ₹ 40,00,000/-.

11. Therefore, finding no error in the order passed by the concerned Court and the challenge being the devoid of merit, the petitions stand ***rejected***.

Consequently, interim order operating in both the cases shall stand dissolved.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

bkp/CT:MJ