

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.648 of 2015**

Daulat Purohit S/o Shri Shambu Purohit, Aged about 32 years, R/o MM-84,
Padmanadpur, Tahsil & District-Durg (CG)

---Applicant**Versus**

Ajay Singh S/o Shri Bhim Singh, Aged about 39 years, R/o Near Sai
Manglam, Vidyut Nagar, Durg, Tahsil & District-Durg-(CG)

---Respondent

For Applicant	:	Mr. Ashish Gupta, Advocate
For Respondent	:	Mr.Sandeep Yadav, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****18/09/2015**

1. The applicant has been convicted for an offence under Section 138 of the Negotiable Instruments Act, 1881. He has preferred an appeal before the First Additional Sessions Judge, Durg. During pendency of the appeal, the applicant has filed an application under Section 391 of the CrPC for additional evidence and prayed that Vijay Kumar Sharma, executant and Neeraj Singh Rathore, who is witnessed to Ex.D/1, they ay be permitted to be examined.
2. The First Additional Sessions Judge, Durg has rejected the application holding that Ex.D/1 has been proved by the applicant himself as he was also party to the said agreement. Witness Avinash Verma has been examined as defence witness 2.
3. Fact remains that the executant of that document i.e. present applicant has been examined as DW-1 and one witness Avinash Verma has been examined as DW-2 to prove Ex.D/1.

4. In a recent decision of **Ashok Tshering Bhutia Vs. State of Sikkim**¹ their Lordships of the Supreme Court have held that additional evidence can be taken at the appellate stage in exceptional circumstances, to remove an irregularity, where the circumstances so warrant in public interest. Generally, such power is exercised to have formal proof of the documents, etc. just to meet the ends of justice. However, the provisions of Section 391 CrPC cannot be pressed into service in order to fill up lacunae in the prosecution case.

5. In view of the law laid down by the Hon'ble Supreme Court in the aforesaid case and finding recorded by the First Additional Sessions Judge, Durg that Ex.D/1 has duly proved by the applicant in accordance with law, the First Additional Sessions Judge, Durg is absolutely justified in rejecting the application filed under Section 391 of the CrPC. I do not find any illegality in the order impugned.

6. Consequently, the revision is liable to and is accordingly dismissed.

7. Certified copy as per rules.

**Sd/-
(Sanjay K. Agrawal)
JUDGE**

B/-

¹(2011) 4 SCC 402