



Judgment

1-Cr.WP-694-2025

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 694 of 2025

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Dhanraj s/o. Rajaramji Nagdive,
Age 50 yrs, Occ: Business,
R/o. Frezarpura, District Amravati.

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PETITIONER

- - V E R S U S - -

- 1] State of Maharashtra,
Through P.S.O.,
Police Station Gadge Nagar,
District Amravati.
- 2] Rambhau s/o. Hambarji Patil,
Age 57 years, Occ: Agriculturist,
R/o. Yashodha No. 1, Amravati,
Taluka & District Amravati.

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RESPONDENTS

Mr. U.V. Chakravarty, Advocate for the Petitioner.
Ms. S.N. Thakur, A.P.P. for the Respondent No.1/State.

CORAM : M.M. NERLIKAR, J.

DATE : SEPTEMBER 09, 2025.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Ms. S.N. Thakur, learned A.P.P. waives service for Respondent No.1-State. With consent of learned Counsel for the parties, the petition is taken up for final hearing.

2. The present Petition is filed under Article 227 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023. The petitioner is praying for quashing and setting aside the order dated 21/07/2025 passed below Exh.21 by the learned Sessions Judge, Amravati, in Criminal Appeal No.100/2023, wherein the application at Exh.21, preferred under Section 391 of the Code of Criminal Procedure, 1973, for permission to lead additional evidence by examining Chandrapal Meshram came to be rejected by the learned Sessions Judge, Amravati.

3. Brief facts of the case are that, the petitioner filed an application before the Learned Judicial Magistrate First Class,

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Amravati, under Section 156(3) of the Code of Criminal Procedure, seeking direction to register the First Information Report for the offences punishable under Sections 420, 468, 471, 403 and 406 of the Indian Penal Code, 1860. Accordingly, the learned Magistrate was pleased to issue directions under Section 156(3) and on that basis, First Information Report No.282/2013 was registered against the respondent No.2.

4. It is alleged in the First Information Report that the petitioner was the Secretary of Pradnya Magasvargiya Gruh Nirman Sahakari Sanstha, Nimbhora, Amravati, and that Respondent No.2 was the President of the said Society. On 05/01/2011, the Respondent No.2 sold plot No.8-B to one Harihar Shankarrao Anasane for a total consideration of Rs.70,000/-, without obtaining the consent of the members of the Society, by preparing false and fabricated documents. It is also alleged that the said plot was allotted to one Chandrapal Meshram.

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5. Respondent No.1 – Police Station, after registering the First Information Report, conducted the investigation, and upon its completion, filed a charge-sheet before the Learned Chief Judicial Magistrate, Amravati, bearing No.182/2013 dated 22/05/2013, for offences punishable under Sections 420, 468, 471, 403 and 406 of the Indian Penal Code, 1860. The case was registered as R.C.C. No.665/2014. Thereafter, charges were framed against the respondent No.2. The prosecution led evidence and examined as many as four witnesses in order to prove the guilt of respondent No.2. The petitioner was also examined as one of the witnesses, i.e., P.W.-1. After concluding the trial, the learned Trial Court was pleased to acquit respondent No.2 by its judgment and order dated 20/04/2023.

Aggrieved by the said judgment and order dated 20/04/2023 passed by the Learned Chief Judicial Magistrate, Amravati, the petitioner preferred an appeal under Section 372 of the Code of Criminal Procedure before the Learned Sessions

Judge, Amravati, bearing Criminal Appeal No.100/2023.

6. The petitioner preferred an application at Exh.21 under Section 391 of the Code of Criminal Procedure, on 23/05/2025 seeking permission from the Appellate Court to lead additional evidence by examining Chandrapal Meshram, on the ground that the said Chandrapal Meshram was not examined during the trial, despite being a crucial witness. Not only that, the Plot No.8-B which was sold by respondent No.2, was originally allotted to the said Chandrapal Meshram. It is further stated that, upon perusal of the judgment of the Trial Court, it is revealed in Paragraph 13 that the Court observed that the prosecution failed to examine the main witness, namely Chandrapal, whose plot was sold by the respondent No.2 to Harihar Anasane. Therefore, Chandrapal Meshram is a material witness necessary to prove the prosecution case. It is further stated that for proper adjudication of the matter, it is necessary to record further evidence of Chandrapal Meshram,

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and accordingly, prayed to summon and examine Chandrapal Meshram as witness in the interest of justice.

7. Respondent No.2 filed his reply to the application at Exhibit-21 and opposed the same. In his reply, it was contended that a fair opportunity had been granted to the complainant during the course of the trial. It was further stated that the complainant was fully aware of all the facts and circumstances of the case during the trial proceedings. However, no request was made at that stage to examine Chandrapal Meshram as a witness. It was contended that the present application, filed at the stage of arguments in the appeal, seeking to examine a witness who was available during the trial, amounts to nothing but an attempt to delay the proceedings and wastage of valuable time of the Court. Accordingly, Respondent No.2 prayed for rejection of the application. The prosecution also filed its reply and submitted that the charge-sheet does not contain the statement of

Chandrapal Meshram. The prosecution adopted the reply filed by Respondent No.2.

8. I have heard the learned counsel appearing for the petitioner at length. He submitted that the Police Authorities did not conduct a proper investigation and deliberately failed to record the statement of the main witness, Chandrapal Meshram. The petitioner has every right to file an application under Section 391 of the Code of Criminal Procedure in the interest of justice as Section 391 specifically permits for leading of additional evidence even at the appellate stage. The learned counsel also drew my attention to the observations made by the Trial Court in its judgment, wherein it was noted that the prosecution had failed to examine the material witness, Chandrapal Meshram. Therefore, it was submitted that in order to do complete justice, it is necessary to adduce or lead additional evidence.

9. On the other hand, the learned A.P.P. submits that the petitioner had ample opportunity to raise his grievance during the course of the trial. It was further stated that the petitioner was fully aware of the filing of the charge-sheet and not only that the prosecution has also examined the petitioner as PW-1, and at no point of time this grievance was raised. The application is by way of an afterthought, and therefore, the learned A.P.P. prayed that the present petition may not be entertained.

10. So far as the law in respect of adducing additional evidence is concerned, it would be useful to refer to the recent judgment of the Supreme Court in the case of *AjitSinh Chehuji Rathod VS. State of Gujarat and Another (2024) 4 SCC 453*.

The Supreme Court, in Paragraph 8, has held as under:-

“ 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 391 CrPC 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.”

The Supreme Court has summarised the law regarding additional evidence in the case of ***Ashok Tshering Bhutia (2011) 4 SCC 402***, in Paragraph Nos.28 to 32, which reads as under:-

“28. Additional evidence at the appellate stage is permissible, in case of a failure of justice. However, such power must be exercised sparingly and only in exceptional suitable cases where the court is satisfied that directing additional evidence would serve the interests of justice. It would depend upon the facts and circumstances of an individual case as to whether such permission should be granted having due regard to the concepts of fair play, justice and the well-being of society. Such an application for taking additional evidence must be decided objectively, just to cure the irregularity.

29. The primary object of the provisions of Section 391 Cr.P.C. is the prevention of a guilty man's escape

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through some careless or ignorant action on part of the prosecution before the court or for vindication of an innocent person wrongfully accused, where the court omitted to record the circumstances essential to elucidation of truth. Generally, it should be invoked when formal proof for the prosecution is necessary. (Vide Rajeswar Prasad Misra v. The State of West Bengal & Anr., AIR 1965 SC 1887; Ratilal Bhanji Mithani v. The State of Maharashtra & Ors., AIR 1971 SC 1630; Rambhau & Anr. v. State of Maharashtra, AIR 2001 SC 2120; Anil Sharma & Ors. v. State of Jharkhand, AIR 2004 SC 2294; Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat & Ors., (2004) 4 SCC 158; and Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi), AIR 2010 SC 2352).

30. *This Court in State of Gujarat v. Mohanlal Jitamalji Porwal & Anr., AIR 1987 SC 1321, dealing with the issue held as under:*

“5... To deny the opportunity to remove the formal defect was to abort a case against an alleged economic offender. Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not

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a persona-non-grata whose cause may be treated with disdain. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.....”

31. *In Rambhau (supra), a larger Bench of this Court held as under:*

“4. Incidentally, Section 391 forms an exception to the general rule that an Appeal must be decided on the evidence which was before the Trial Court and the powers being an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice. Be it noted further that the doctrine of finality of judicial proceedings does not stand annulled

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or affected in any way by reason of exercise of power under Section 391 since the same avoids a de novo trial. It is not to fill up the lacuna but to subserve the ends of justice. Needless to record that on an analysis of the Civil Procedure Code, Section 391 is thus akin to Order 41, Rule 27 of the Civil Procedure Code.”

(Emphasis added)

32. *In view of the above, the law on the point can be summarised to the effect 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 Cr.P.C. cannot be pressed into service in order to fill up lacunae in the prosecution’s case.”*

11. Thus, in the light of the ratio laid down by the Supreme Court, it is necessary to examine the facts of the present case. Admittedly, the petitioner filed an application under Section 156(3) of the Code of Criminal Procedure, praying to register the offence against the respondent No.2.

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Accordingly, the learned Magistrate, was pleased to issue direction under Section 156(3) of the Code of Criminal Procedure, and directed the Respondent No.1 - Police Station to register the First Information Report. After registration of the FIR, an investigation was conducted, and thereafter, charge-sheet came to be filed. The petitioner's name was mentioned in the particulars of witnesses to be examined at Serial No.1, however, the name of Chandrapal Meshram does not figure in the list of particulars of witnesses to be examined. It is further to be noted that the prosecution has examined the petitioner as PW-1. Not only that, other witnesses were also examined, and after considering both oral as well as documentary evidence, the Trial Court acquitted Respondent No.2-Rambhau Hambarji Patil. While acquitting the Respondent No.2, the Trial Court observed that the prosecution failed to examine Shri Chandrapal Meshram, despite the fact that the plot in dispute was allotted to him. It is further observed that, considering the facts and circumstances, Chandrapal Meshram would be

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material witness, however, the prosecution did not examine him and accordingly respondent No.2 was acquitted.

12. It is also not in dispute that, the petitioner filed an appeal against the judgment and order of the Trial Court. After filing of the appeal, the petitioner preferred Criminal Appeal No.100/2023. During the pendency of the appeal, the petitioner preferred an application before the Appellate Court at Exh.21, seeking permission to lead additional evidence. The said application came to be rejected by the Learned Sessions Judge, Amravati, by order dated 21/07/2025, holding that the grounds cited by the appellant are not sufficient to allow additional evidence by way of examination of Chandrapal as a witness.

13. At this juncture, it becomes necessary to consider whether, in the given set of facts and circumstances, the petitioner can be permitted to lead additional evidence by examining Chandrapal Meshram ?

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14. Since from the beginning i.e. right from the initiation of prosecution, till the conclusion of trial, the petitioner was part and parcel of the criminal proceedings. However, at no point of time, the petitioner either prayed or showed due diligence to examine Chandrapal Meshram even though the petitioner was aware about all the facts of the case. The petitioner preferred an application under Section 156(3) of the Code of Criminal Procedure in the year 2013. Pursuant thereto, the First Information Report was registered on 22/05/2013, the charge-sheet was filed on 21/07/2014, and charges were framed on 11/02/2021. The present petitioner was examined by the prosecution on 19/03/2022. After conclusion of the trial, the judgment was delivered by the Trial Court on 20/04/2023. Thus, for near about 10 years, the trial remained pending. During this period no steps/efforts were taken by the petitioner. It is further necessary to mention at this juncture that, the petitioner preferred Criminal Appeal No.100/2023 against the order of acquittal on 11/05/2023 and the application under

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Section 391 of the Code of Criminal Procedure for leading additional evidence was preferred on 23/05/2025 i.e. almost after two years. The very fact that, though the appeal was filed in the year 2023, the application for leading additional evidence was filed in the year 2025, these facts itself shows that the petitioner is not diligent in prosecuting the criminal proceedings.

15. As was observed by the Supreme Court in the case of *AjitSinh Chehuji Rathod (supra)*, the power to record additional evidence under Section 391 of the Cr.P.C. should only be exercised when the party making such request and 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. Therefore, the Supreme Court has clarified that the powers under Section 391 Cr.P.C. can be exercised in

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two contingencies when despite due diligence such request could not be present or new facts have come to light which makes it necessary to present such request during pendency of appeal. In the present case, the petitioner has failed to point out that, despite exercising due diligence, he was unable to bring to the notice of the Trial Court the necessity of examining Chandrapal Meshram. It seems from the record that it is only after the pronouncement of Judgment by the Trial Court and after preferring the appeal, the petitioner filed an application considering the observations of the Trial Court in respect of examination of Chandrapal. It is a settled principal of law that by leading additional evidence, the lacunae in the trial cannot be filled in as was observed by the Supreme Court in the case of *Ashok Tshering Bhutia (supra)*. In paragraph No.32 of the said judgment, after referring several judgments, the Supreme Court has summarised and held that “the additional evidence can be taken at the appellate stage in exceptional circumstances, to remove an irregularity, where the circumstances so warrant in

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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 Cr.P.C. cannot be pressed into service in order to fill up lacunae in the prosecution case.”

16. Therefore, based on the above observations, it is crystal clear that the petitioner cannot be permitted to lead additional evidence at the appellate stage, as the petitioner was part and parcel of the entire criminal proceedings since from inception and failed to show due diligence during the course of the trial, and therefore, the petitioner cannot be permitted to fill in the lacunae. Not only that, there is no irregularity in the conduct of the trial, nor has the petitioner made out any exceptional case, in order to lead the additional evidence. If this is to be permitted, it would amount to filling up of lacunae, which would result into miscarriage of justice.

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17. Therefore, considering the above facts and circumstances, the Appellate Court, while considering the application at Exh.21, has not committed any error and has rightly rejected the application at Exh.21. Accordingly, no case is made out to exercise the powers under Article 227 of the Constitution of India or under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to interfere in the order dated 21/07/2025. Hence, the following order:-

ORDER

(i) The Criminal Writ Petition No. 694/2025 is dismissed.

(ii) Rule stands discharged.

[M. M. NERLIKAR, J]