

*Crl.R.C.(MD).No.391 of 2025*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.03.2025

PRONOUNCED ON :16.04.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

**Crl.R.C.(MD)No.391 of 2025**

**and**

**Crl.M.P.(MD)No.4073 of 2025**

Mala

... Appellant/Appellant/Accused

Vs.

V.Pandi

: Respondent/Respondent/Complainant

**PRAYER:** Criminal Revision Petition has been filed under Section 438 r/w 442 of BNSS to call for the records in connection with the order passed by the learned Principal District and Sessions Court, Dindigul in Cr.M.P.No.251 of 2025 in Crl.A.No.93 of 2024, order dated 04.03.2025, filed by the appellant against the respondent and set aside the same.

For Petitioner : Mr.S.Siva Prakash

For Respondent : Mr.C.Mayilvahana Rajendran



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### **ORDER**

This Criminal Revision is directed against the order passed in Cr.M.P. (MD)NO.251 of 2025 in Crl.A.No.93 of 2024, dated 04.02.2025, on the file of the Additional District and Sessions Court, Dindigul, dismissing the petition filed under Section 432 BNSS.

2. The respondent filed a private complaint under Section 200 Cr.P.C., against the petitioner for the alleged offence under Section 138 of the Negotiable Instruments Act. After full trial, the learned Judicial Magistrate has passed a judgment dated 10.09.2024 finding the petitioner guilty under Section 138 of the Negotiable Instruments Act and convicted and sentenced him to undergo one year Simple Imprisonment and to pay compensation of Rs.4,00,000/- within a period of two months, failing which, to undergo two months Simple Imprisonment.

3. The petitioner/accused, aggrieved by the judgment of conviction, preferred an appeal in Crl.A.No.93 of 2024 and that the same is now pending on

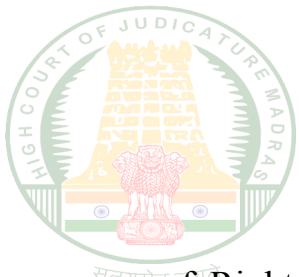


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the file of the Additional District and Sessions Court, Dindigul. Pending appeal, the petitioner/accused has filed the above petition under Section 432 BNSS for summoning six witnesses for examination on her side. The respondent has filed a counter raising serious objections. The learned appellate Judge, after enquiry, has passed the impugned order dated 04.03.2025 dismissing the petition. Challenging the dismissal of the petition filed under Section 432 BNSS, the present revision came to be filed.

4. The case of the petitioner canvassed in the petition filed under Section 432 BNSS is that the petitioner is working as a teacher in Anaipatti Government Kallar Primary School from 2014 onwards, that the petitioner, due to her family dispute, approached one Sumathi in the year 2018, who in turn referred the petitioner to her relative Srinithiya, that the said Srinithiya gave Rs.4.5 Lakhs to the petitioner as hand loan on monthly interest basis and the petitioner issued three cheques along with promissory notes, that the said Srinithiya handed over the cheques to the respondent/complainant and through the respondent filed the present cheque case, that Srinithiya's husband Muthukumar gave a complaint against the petitioner and her family members in Cr.No.691 of 2021, dated 08.09.2021 for the offences under Sections 420, 294(b), 506(i) I.P.C., and 92(b)



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of Rights of Persons with Disabilities Act, 2016 and the said complaint was closed as mistake of fact, that the said Srinithya and her husband were doing exorbitant interest business in and around Nilakotai and other areas, that one Suvaneesh Pairava gave a compliant against Srinithya and a case came to be registered in Cr.No.19 of 2022, for the offences under Sections 294(b), 420, 506(i) I.P.C., and Sections 3, 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act 2003 and is pending before the Nilakkottai Police Station, that one Udhayakumar also gave a complaint against Srinithya and F.I.R., came to be registered in Cr.No.25 of 2022 for the offences under Sections 294(b), 323, 420, 506(ii) I.P.C., and Section 3 and 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act on 23.01.2022 and is also pending and that the petitioner has given a complaint against the said Srinithya and her family members and F.I.R., came to be registered in Cr.No.83 of 2023 under Sections 294(b), 506(i) I.P.C., and Sections 3 and 4 of Tamil Nadu Prohibition of Charging Exorbitant Interest Act 2003 on 09.04.2023 and is also pending.

5. It is the further case of the petitioner that the said Srinithya is a practicing Advocate and taking advantage of the same, she has been running exorbitant interest business and filed various cases against the various victims



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including the petitioner, that the said Srinithya acted as Counsel on record in some of the cases on the file of the Judicial Magistrate No.I, Dindigul, that the petitioner has summoned and examined the said Srinithya in the case in C.C.No. 513 of 2021 on her side and she gave false evidence, that the said Srinithya in her evidence would say that she does not know the petitioner, but in the year 2020 itself, the said Srinithya and her husband gave a false complaint before the Kallar Educational Department and after enquiry, they found that all the allegations are false, that the petitioner has sent interest regularly as well as the principal amount through her men every month to Srinithya's bank account and that therefore, it has become just and necessary to examine the said Muthukumar, Srinithya's Bank Manager, police officials, Government Kallar Educational Department clerk and the men of the petitioner, who deposited the amount in Srinithya's account. Hence, the petitioner was constrained to file the above application under Section 432 BNSS seeking permission for examination of the said witnesses.

6. Before entering into further, it is necessary to refer Section 432 BNSS:

***“432. Appellate Court may take further evidence or direct it to be taken.***

***(1)In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record***



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*its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.*

*(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.*

*(3) The accused or his advocate shall have the right to be present when the additional evidence is taken.*

*(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXV, as if it were an inquiry.”*

7. Section 432 BNSS which corresponds to Section 391 Cr.P.C., deals with power of Appellate Court to take further evidence. It is pertinent to note that the appellate Court can allow additional evidence under Section 391 Cr.P.C., only in exceptional circumstances and the same cannot be used merely to fill in lacuna, that might exist in the evidence.

8. The Hon'ble Supreme Court in ***Ajitsinh Chehuji Rathod Vs. State of Gujarat and another*** reported in ***2024 Live Law SC 64***, has specifically held



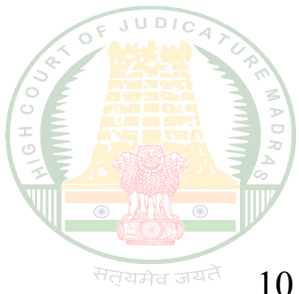
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that the power to record additional evidence at the appellate stage should not be exercised in a routine and casual manner and such a power can only be exercised when nonrecording of the evidence may lead to failure to justice and the relevant portion is extracted hereunder:

*“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 nonrecording of such evidence may lead to failure of justice.”*

9. It is pertinent to mention that the power to record additional evidence 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 the pendency of the appeal and that the nonrecording of such evidence may lead to failure of justice.



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10. In the case on hand, admittedly the petitioner has not canvassed any reason or ground as to why he has not chosen to summon the said witnesses before the trial Court. As already pointed out, it is the main contention of the petitioner that Srinithya, a practicing Advocate, has been doing money lending business for exorbitant interest with her husband and that the said Srinithya alone has given the cheque in dispute to the respondent and through him, lodged the above complaint. It is pertinent to note that before the trial Court, the petitioner has summoned and examined the said Srinithya as defence evidence.

11. The learned Counsel for the petitioner would submit that the said Srinithya while giving evidence before the trial Court would say that she does not know the petitioner, but in the year 2022, she has lodged a complaint against the petitioner before the Kallar Educational Department and that therefore, it can easily be inferred that the said Srinithya has given false evidence before the trial Court and for proving the same, the Government Kallar Educational Department clerk and the persons who deposited the amount in the bank account of Srinithya, Srinithaya's bank Manager, her husband Muthukumar and the other police officials who registered the cases against Srinithya and her husband are to be summoned and examined.

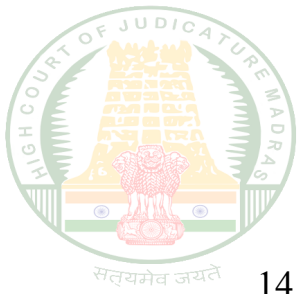


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12. According to the petitioner, the entire case revolves around Srinithya and hence, the examination of the said witnesses are very much vital to prove the defence of the petitioner. In the petition filed under Section 432 BNSS, the petitioner, except showing some witnesses, has nowhere whispered about the reasons for examining the said witnesses and the relevancy to the case on hand. As rightly observed by the learned appellate Judge, the case was taken on file in the year 2021 and the same was pending for nearly 4 years before the trial Court. The petitioner has not assigned any reason or ground for not summoning the other witnesses while examining the said Srinithya as defence witnesses. It is not the case of the petitioner that she applied for examining those witnesses, but the same came into rejected by the trial Court.

13. As rightly contended by the learned Counsel for the respondent, it is the specific case of the respondent that the petitioner has borrowed amount from the respondent for which, she issued cheque and since the same was dishonoured, the petitioner has then sent a legal notice and despite the same, the petitioner has not chosen to pay the amount, as that therefore, the respondent was constrained the complaint for the offence under Section 138 of the Negotiable Instruments Act.



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14. Admittedly, the petitioner has not produced any iota of evidence to show that there existed money transaction between herself and Srinithya and despite examining the said Srinithya, nothing was elicited by the petitioner's side in their favour. Considering the entire facts and circumstances and the stage at which the above petition came to be filed, as rightly observed by the learned appellate Judge, the above petition came to be filed only to protract the proceedings as much as possible and as such, the impugned order dismissing the petition cannot be found fault with. Consequently, this Court concludes that the Criminal Revision Case is devoid of merits and the same is liable to be dismissed.

15. In the result, the Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. The learned appellate Judge is directed to proceed with the hearing of the appeal and dispose of the same, within a period of three months from the date of receipt of a copy of this order.

**16.04.2025**

NCC : Yes/No  
Index : Yes/No  
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**K.MURALI SHANKAR, J.**

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**Pre-Delivery order made in**

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