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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 04.08.2025***

\+ CRL.M.C. 2219/2025

HARSHI .....Petitioner

Through: Mr. Vipul Pankaj Sanghi, Ms. Ananya Kar Sanghi, Mr. Prateek Vaish, Ms. Anshika Verma and Ms. Neha Arya, Advocates

versus

ANITA GUPTA .....Respondent

Through: Mr. Yashpal Sharma, Advocate.

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\+ CRL.M.C. 2222/2025

HARSHI .....Petitioner

Through: Mr. Vipul Pankaj Sanghi, Ms. Ananya Kar Sanghi, Mr. Prateek Vaish, Ms. Anshika Verma and Ms. Neha Arya, Advocates.

versus

ANITA GUPTA .....Respondent

Through: Mr. Yashpal Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE ARUN MONGA

ARUN MONGA, J. (ORAL)

1. Vide this common order both the above tilted petitions are being disposed of as similar issues and facts are involved therein.

2. Petitioner seeks setting aside of two impugned orders, both dated 14.02.2025, passed by learned Additional Sessions Judge, East District, Karkardooma Courts, whereby the applications of the Petitioner herein to lead additional evidence by calling one Mr. Pramod Dhandha, stated to be a material witness, were dismissed. For ease of reference, recitals are being taken from petition bearing CRL.M.C. No. 2219/2025.

3. Succinctly speaking, the case set up in the petition is that the respondent was running a chit fund scheme under the name Committee System, requiring members to deposit money and post-dated cheques as security. The Petitioner gave a blank cheque as security to the respondent. However, due to discord, she withdrew from the chit fund scheme. She requested the respondent not to present the security cheque, but the respondent fraudulently presented it by filing an amount of Rs. 9,00,000/- and it was dishonoured.

4. That on 13.11.2019, the Respondent filed a complaint under Section 138 NI Act before the learned CMM, East, Karkardooma Courts, Delhi.

5. In the trial, the then counsel for the Petitioner failed to summon one key witness, i.e., Mr. Pramod Dhanda. By judgment dated 12.03.2024, the Petitioner was held guilty. On 19.04.2024, she was sentenced to four months' simple imprisonment and directed to pay compensation of ₹14,00,000/-.

6. That on 30.05.2024, the Petitioner filed Criminal Appeal No. 84/2024 against the conviction and sentence. On 06.11.2024, she moved an application under Section 391 CrPC, (corresponding with

Section 342 of BNSS), for adducing additional evidence by summoning Mr. Pramod Dhanda, which was dismissed on 14.02.2025. Hence, the instant set of revision petitions.

7. In the aforesaid backdrop I have heard the rival contentions and gone through the case file.

8. Learned counsel for the petitioner argues as below:-

8.1 That through the application, CW-1, namely Mr. Pramod Dhanda, was duly cross-examined by the counsel for the appellant, and it was on her own volition that she disclosed the name of Mr. Pramod Dhanda, which was subsequently examined and analyzed at the appellate stage. When appellant engaged a new counsel, in the course of deliberations, she was advised to file an application under Section 391 of Cr.P.C.

8.2 That a certain crucial part of the testimony of the aforesaid witness remained unexamined by default, and thus, owing to the default of the counsel, the complainant suffered the adverse consequences, so was she advised. Accordingly, she took corrective steps by filing an application for the re-examination of the said witness. The learned Sessions Court, however, dismissed the application, inter alia, premised on the reasoning that the appellant had sufficient opportunity to examine Sh. Pramod Dhanda as a defense witness during the trial, but she failed to do so.

8.3 Subsequently, petitioner discovered that the testimony of the aforesaid witness CW-1 who remained unimpeached, was not challenged on merits by default of the counsel, or due to some miscommunication or sheer oversight. Either way, counsel would submit that there is no fault of hers and she ought not to suffer the adverse consequences arising from the inadvertent mistake of her counsel.

9. While opposing the aforesaid arguments, learned counsel for respondent/complainant would submit that the application filed by the accused had been rightly dismissed by the learned Session Court. He would thus support the impugned order for the reasons already stated therein.

9.1 Furthermore, the counsel for the respondent submits that the petitioner, after having been convicted, is indulging in dilatory tactics to delay the final outcome of the appeal.

10. Having heard, I shall now render my decision by recording reasons in the succeeding part.

11. Qua the delay in adducing evidence at the appellate stage and not at the appropriate stage during the trial, learned counsel for the petitioner would candidly submit that it happened not due to the fault of the petitioner but her counsel, as she is illiterate. She is not aware of the intricacies of the legal process being a housewife and was under a bona fide impression that all the requisite steps have been taken by her counsel to defend her in the trial.

12. In the light of above submissions and also in the light of sufficient reasons given in the application under Section 391 Cr.P.C. **(Annexure P-5)**. I am of the view that the delay is not intentional. Application filed before the Appellate Court is duly supported by an affidavit. Of course, the same was opposed in the reply filed by the complainant contending that it is nothing but an attempt to delay the

proceedings.

13. At this stage, Section 391 of Cr.P.C., corresponds to Section 342 of BNSS, *ibid,* be seen which reads as under:-

> *"1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record 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 pleader 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 XXIII, as if it were an inquiry."*

13.1 It is a settled principle that the primary object of Section 391 Cr.P.C is to enable the appellate court to secure the ends of justice and prevent miscarriage of justice. The provision is not intended to punish a litigant for the inadvertent lapse of her counsel, particularly when the evidence sought to be produced is essential for a just decision of the case. In the present matter, recalling CW-1 and summoning Mr. Pramod Dhanda as an additional witness is necessary for a fair adjudication of the real issues in controversy. Denial of such opportunity would result in irreparable prejudice to the petitioner, while no serious prejudice would be caused to the respondent, as he retains full right of cross-examination.

14. Testimony of CW-1, particularly the portion which remains unimpeached which reads as below:-

"1. I know the accused since 2017. She used to come along with Mr. Pramod Dhanda for purpose of LIC policy. Accused used to frequently come to my house and I had also gone to her house 2-3 times. Accused was LIC Agent. I do not know her monthly income. The house of accused which I visited was situated in Jawala Nagar, Shahdara, Delhi-32. House must be around 30-40 S. Yards. As our relationship grew, accused used to frequently demand money citing ill health of her children. I gave money to her 4 times total amounting to Rs. 10 lacs. She would assure me that she will return the same as and when she would receive loan amount from LIC. Loan amount was advanced in my house. Mr. Pramod Dhanda would always accompany the accused. Loan was given in his presence. Accused assured me that she would return the same in 6-7 months Loan was given free of interest. No written document/receiving was prepared.

Q Why did you not take receiving when such huge amount was involved?

Ans. Since we had become quite close, I did not take receiving in good faith.

2. In 2018 I was not running any committee. I have never run or been a part of any committee. I run a small clothing business from my home. At the relevant time, I was earning around Rs. 30-40,000/- in cash per month. My husband and sons are also earning. Loan amount was advanced from my savings as well as money I would ·receive from my family. Amount was kept in my house. My husband is getting salary of Rs. 30,000/- per month and my children are in business. I do not know the income of my children. I am not income tax payee. I maintain the account of our house orally. Accused also took loan from my elder son of around Rs. 2-2.5 lacs though I am not sure of the total amount. Court case regarding the same is also pending.

I demanded money from accused after expiry of around 6 months, then she gave me the cheques in question. I received the cheques in filled condition. After the cheques got dishonored, I talked to the accused telephonically and also went to her house. She told me that payment had stopped. It is wrong to suggest that I was running a committee and the cheques were given as security for the same. It is wrong to suggest that no loan was taken by the accused. It is wrong to suggest that I misused the

> *cheques of accused and she has no liability towards me. It is wrong to suggest that - I do not have the financial capacity to advance the loan in question. It is wrong to suggest that I am deposing falsely".*

15. In the above backdrop, the evidence now sought to be adduced is neither irrelevant nor intended to fill up lacunae after conviction. Rather, it is vital to determine whether the cheques were issued as security for a chit fund scheme or against a personal loan. The name of Mr. Pramod Dhanda already figures in CW-1's testimony, making his examination necessary to ascertain the truth. The petitioner, being an illiterate housewife, relied entirely on her previous counsel and cannot be made to suffer for the omission that was beyond her control. The omission falls within the scope of Section 391 CrPC. The said section empowers the appellate court to take additional evidence if it is essential for the just decision of the case.

16. Petitioner is a housewife and her defence is that said cheques were given blank as a collateral security and there was no amount filled up in the same. Furthermore, her defence on merits is that the complainant was actually carrying on a business of chit fund company and, in support thereof, her customers/ clients were prayed to give blank cheque just to establish mutual faith. Taking advantage, the same has been presented and those very transactions remain unexamined. Petitioner seeks to summon witness name Mr. Pramod Dhanda who has been named in the testimony of CW-1 as a witness by way of additional evidence.

17. In the parting, adverting once again to the delay in filing of the application under Section 391, as noted, same though not intentional,

but can be compensated by imposing certain costs. Trite it may sound, while justice delayed is justice denied at the same time justice hurried is justice buried.

18. Accordingly, subject to payment of Rs.5,000/-, in each case, payable to the respondent/complainant as costs, both the applications filed under section 391 of the Cr.P.C (corresponding with Section 342 of BNSS) are allowed. Petitioner shall be accorded one effective opportunity to examine the CW-1/ Mr. Pramod Dhanda for which he shall be summoned by the learned Appellate court in accordance with the law.

ARUN MONGA, J

AUGUST 4, 2025/*nk*