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

+ **CRL.M.C. 594/2016**

UCO BANK

.....Petitioner

Through: **Mr. Rajesh Rattan, Advocate.**

versus

SURYA VINAYAK INDUSTRIES LTD

.....Respondent

Through: **Mr. Vijay Aggarwal, Mr. Yash Agrawal, Mr. Rachit Bansal, Mr. Pankush Goyal, Mr. Ketan Kumar Roy and Mr. Shashank Kumar Dey, Advocates for R-3.**

Mr. Kishan Nautiyal and Mr. Abhay Singh, Advocates for R-6 & 8, Mr. Sanjeev Agarwal and Mr. Somesh Jain.

Mr. Rohit Chaudhary, R-7 in person, through VC.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

21.01.2025

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1. The present petition under Section 482 of the Code of Criminal Procedure, 1973¹ is directed against the impugned order dated 10th November, 2015 passed by the Metropolitan Magistrate in Complaint Case No. 751/1/14 titled ***“UCO Bank vs. M/s Suryavinayak Industries Ltd. & Ors.”*** filed under Section 138 of the Negotiable Instruments Act, 1881,² as well as the subsequent order dated 13th January, 2016 passed by the Special

¹ “Cr.P.C.”

² “NI Act”



Judge dismissing the Criminal Revision Petition No. 147/2015 titled as ***“UCO Bank vs. M/s Surya Vinayak Industries Ltd. and others”***.

2. The factual matrix leading to the filing of the present case, as narrated in the petition, is as follows:

2.1 The Petitioner is the Complainant in the proceedings initiated under Section 138 of the NI Act. The case of the Petitioner is that they sanctioned a loan of INR 50 crores to Respondent No. 1 Company, Surya Vinayak Industries Limited. Respondent No. 2, the authorised director of Respondent No. 1, signed and executed various loan documents and Respondents Nos. 2 and 3 executed separate letters of guarantee, all dated 04th July, 2011 on behalf of Respondent No. 1 in favour of the Petitioner.

2.2 Following defaults in repayment of the loan and accrued interest, the Respondents issued cheques in favour of the Petitioner for payment. Upon presentation for encashment, these cheques were dishonoured with the reason *“payment stopped by drawer.”* Consequently, the Petitioner issued a statutory notice, calling upon Respondent No. 1 and its directors (Respondents Nos. 2 to 8) to make payment of the cheque amounts. However, in the absence of any response or compliance from the Respondents, the Petitioner initiated proceedings under Section 138 of the NI Act.

2.3 After recording pre-summoning evidence, the Magistrate issued order dated 22nd September, 2014, summoning the Respondents,³ requiring them to appear in the proceedings.

2.4 Aggrieved by the summoning order, the Respondents preferred Criminal Revision No. 20/2015 before the Court of ASJ. By an order dated

³ “summoning order”



22nd April, 2015, the ASJ disposed of the revision petition, noting that the notice under Section 251 of the Cr.P.C, 1973 had yet to be framed. The ASJ clarified that the Respondents would be entitled to raise their submissions at the stage of framing of notice under Section 251, Cr.P.C.

2.5 Pursuant to the aforesaid order, the Respondents proceeded to argue the matter on the framing of notice under Section 251 of the Cr.P.C. In order to controvert the Respondents' contentions, the Petitioner, without citing any provision of law, filed an application dated 21st August, 2015 before the Magistrate, to place on record certain additional documents.

2.6 In the application, the Petitioner contended that the documents were crucial for the fair and just consideration of the notice under Section 251 of the Cr.P.C. to be framed against the Respondents. The documents, as noted by Magistrate, included the following:

- "i) Copy of order dated 10.04.2013 passed by Ld. ASJ, Dwarka Courts;*
- ii) Copy of letter dated 10.04.2013 issued by Reserve Bank of India (RBI);*
- iii) Original letter dated 27.01.2014 issued by CBI;*
- iv) Certified copy of 12th Annual Report of the accused no.1 company;*
- v) Certified copy of the Balance Sheet of accused no.1 company, issued by ROC;*
- vi) Certified copy of Profit & Loss and list of directors of accused no.1 company, issued by ROC"*

2.7 The Petitioner argued before the Magistrate that, since the Respondents were asserting that they were not directors of Respondent No. 1 at the time the alleged offence was committed, it was essential to disprove this plea by presenting the additional documents. The Petitioner further contended that these documents were part of the public record and were available in the records of the Registrar of Companies, and, therefore, their authenticity could not be questioned.



2.8 During the course of arguments before the Magistrate, the Petitioner sought to rely on Section 294 of the Cr.P.C. to support the admission of these documents. However, the application was strongly opposed by the Respondents, who argued that such documents could not be considered at the stage of framing the notice under Section 251 of the Cr.P.C. They argued that there was no provision under the Cr.P.C. or the Indian Evidence Act, 1872, permitting the Petitioner to submit these documents, particularly when the pre-summoning evidence had already been recorded and closed.

2.9 After considering the respective contentions, the Magistrate, through impugned order dated 10th November, 2015, declined the Petitioner's request to admit the additional documents. The said order was subsequently challenged in Criminal Revision Petition No. 147/2015 before the Court of Special Judge (PC Act) (CBI)-06, New Delhi District, Patiala House Courts, New Delhi. Upon review of the arguments presented, the Revisional Court declined to exercise its revisional jurisdiction, and made the following observations in order dated 13th January, 2016:

"7. Under the revisional jurisdiction u/s 397 Cr. PC, this court is to decide as to the correctness, legality or propriety of the order in question. Section 397 (2) Cr.P.C provides that the powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings.

8. Coming to the present case, Ld. MM has dismissed the application of the complainant thereby declining the relief of placing additional documents on record. In view of nature of facts and circumstances of the case and the order, it is clear that same is interlocutory in nature and does not affect the substantial rights of either of the parties, therefore the revision is not maintainable u/s 397 (2) Cr.P.C.

9. Even if the merits of the impugned order are considered, I find no illegality or irregularity in the proceedings conducted by the trial court and therefore no interference is called for. The complainant had filed affidavit along with documents during pre-summoning evidence and on the basis of the same the accused persons have been summoned. The court is now required to frame notice u/s 251 Cr.P.C



on the basis of material produced on record during pre-summoning evidence. Thereafter the trial would start and evidence would be again led by the parties. At the stage the application has been moved by the complainant, there is no provision under Cr.P.C to allow and consider additional documents on record as same cannot be read into evidence as per the procedure provided under Cr.P.C. Also no justifiable explanation has been given on behalf of complainant as to why these documents were not produced at the relevant stage i.e. at the time of filing of complaint or at the time of leading pre-summoning evidence. Even if the documents are public documents, it would not perse amount to admissibility or relevancy to the facts of the case. Ld. MM has adopted the right approach in dismissing the application and there is no illegality with respect to the order in question. On both the counts, the revision petition fails.

10. The revision has no merits and substance and accordingly I the same is dismissed.”

3. In light of the foregoing, the Petitioner has now preferred the present petition under Section 482 of the Cr.P.C., impugning the aforementioned orders of the Magistrate as well as the Special Judge. Mr. Rajesh Rattan, Counsel for the Petitioner, submits that the documents sought to be filed by the Petitioner are public documents available in public domain, and their admissibility and genuineness cannot be disputed. He argues that the said documents are crucial for the fair and just adjudication of the case. He urges that the Petitioner should be granted an opportunity under Section 311 of the Cr.P.C. to recall the witness or present additional witnesses, so as to enable them to prove the documents that they wish to rely upon.

4. Mr. Vijay Aggarwal, counsel for Respondent No. 3 as well as Mr. Kishan Nautiyal, counsel for Respondent Nos. 6 and 8, strongly oppose the petition on the grounds of maintainability, contending that a second revision petition cannot be filed under the garb of Section 482 of the Cr.P.C. They further argue that, even on merits, there is no infirmity in the impugned order in as much as that the Petitioner failed to cite any specific provision of the Cr.P.C. that would entitle them to file additional documents before the



Magistrate post the issuance of summons.

5. The Court has considered the aforementioned contentions. It is imperative to note that subsequent to the dismissal of the Petitioner's application for filing additional documents, the Magistrate proceeded to adjudicate the matter on framing of notice under Section 251 Cr.P.C., and acquitted the Respondents *vide* order dated 28th January, 2016. The said order was the subject matter of challenge in CRL.L.P. 462/2016, and has been set aside by this Court through a separate order passed today. Consequently, the proceedings before the Magistrate have been remanded to the stage of framing of notice under Section 251 Cr.P.C.

6. The Petitioner has requested the Court to grant them permission to file an application under Section 311 of the Cr.P.C., seeking the Magistrate's approval to prove the documents they intend to rely upon. Section 311 of the Cr.P.C. provides for the courts' power to summon material witness, or examine person(s) present. Further, Section 91 of the Cr.P.C. envisages the power to issue summons to produce documents. In this regard, it is opposite to refer to the judgement of the Supreme Court in *Varsha Garg v. State of M.P.*,⁴ where the Court has discussed the ambit and scope of Section 311 as well as Section 91 of the Cr.P.C., and made the following observations:

"30. ... we now examine Section 311 of CrPC. Section 311 provides that the Court "may":

(i) Summon any person as a witness or to examine any person in attendance, though not summoned as a witness; and

(ii) Recall and re-examine any person who has already been examined.

32. This power can be exercised at any stage of any inquiry, trial or other proceeding under the CrPC. The latter part of Section 311 states that the Court "shall" summon and examine or recall and re-examine any such person "if his evidence appears to the Court to be essential to the just decision of the case". Section 311 contains a power upon

⁴ 2022 SCC OnLine SC 986.



the Court in broad terms. The statutory provision must be read purposively, to achieve the intent of the statute to aid in the discovery of truth.

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38. Section 91 CrPC empowers inter alia any Court to issue summons to a person in whose possession or power a document or thing is believed to be, where it considers the production of the said document or thing necessary or desirable for the purpose of any investigation, inquiry, trial or other proceeding under the CrPC.

39. Section 91 forms part of Chapter VII of CrPC which is titled "Processes to Compel the Production of Things". Chapter XVI of the CrPC titled "Commencement of Proceedings before Magistrates" includes Section 207 which provides for the supply to the accused of a copy of the police report and other documents in any case where the proceeding has been instituted on a police report. Both operate in distinct spheres.

40. The summons to produce a document or other thing under Section 91 can be issued where the Court finds that the production of the document or thing "is necessary or desirable for the purpose of any investigation, trial or other proceeding" under the CrPC. As already noted earlier, the power under Section 311 to summon a witness is conditioned by the requirement that the evidence of the person who is sought to be summoned appears to the Court to be essential to the just decision of the case."

7. The Supreme Court, in **Varsha Garg**, after examining various case laws, concluded that criminal courts have wide-ranging powers under Section 311 of the Cr.P.C. to summon any person as a witness or recall and re-examine any individual, guided by the principles of fairness and the requirement to uphold justice. It was emphasised that the court is not a mere passive bystander in the pursuit of justice, but is obligated to exercise its powers whenever it finds that any evidence is necessary to meet the ends of justice.

8. In light of the foregoing discussion, the Court is of the view that the Petitioner should not be deprived of the opportunity to request the Magistrate for the filing of additional documents. While Mr. Aggarwal and Mr. Nautiyal have correctly pointed out that a second revision petition



should ordinarily not be filed under the guise of Section 482 of the Cr.P.C., however, this Court can entertain such a petition in exceptional circumstances.⁵ In the peculiar facts and circumstances of the case—particularly since the order acquitting the Respondents has been set aside by this Court and the proceedings have been remanded to the stage of framing of notice under Section 251 Cr.P.C.—the Court is of the opinion that the Petitioner should be provided the liberty to file an application under Sections 311 and 91 Cr.P.C. to prove the documents that they wish to rely upon.

9. Furthermore, the Petitioner's omission to cite a specific legal provision in their application for filing additional documents should not prevent them from submitting documents they deem critical for the just consideration of the case. As previously noted, the Magistrate has broad discretion under the Cr.P.C. to admit additional evidence. Consequently, the Magistrate can decide whether the Petitioner's request under Section 311 is permissible, and proving such documents is necessary for the just and proper adjudication of the case.

10. Moreover, it is also noted that the Magistrate, while passing the impugned order dismissing the Petitioner's application, made the following observations:

"9. As per the settled procedure the complainant is permitted to bring documents on record either at the stage of PSE or at the stage of CE, after framing of Notice u/s 251 Cr. P.C or by using the provision of Section 311 Cr. P.C. But none of these situations is applicable at this moment in the present complaint. Moreover, it is not understandable if these documents were relevant and necessary so far as the present complaint is concerned then what stopped the complainant from producing these documents on record when the complaint was originally filed or when the PSE was tendered."

⁵ *Rajinder Prasad v. Bashir*, (2001) 8 SCC 522; *Kailash Verma v. Punjab State Civil Supplies Corporation & Anr.*, (2005) 2 SCC 571.



11. Pursuant to the setting aside of the order of acquittal in CRL.L.P. 462/2016, the matter has been remanded to the stage of framing of notice under Section 251 Cr.P.C., and therefore, the Petitioner shall now be at liberty to file an application under Section 311 Cr.P.C. subsequent to the framing of notice under Section 251 Cr.P.C.

12. Accordingly, in light of the said development as well as the aforesaid observations of the Magistrate, the present petition is disposed of with liberty to the Petitioner to take appropriate recourse to the provisions under the Cr.P.C./ BNSS including Sections 311 and 91 of the Cr.P.C and/or provisions under BNSS before the Magistrate to request for recalling the witness or producing other witnesses for the purpose of producing and/or proving the additional documents produced along with the application decided under the impugned order. Such an application shall be considered independently on its own merits, influenced by any observation made under the impugned orders.

13. It is clarified that the Court has not expressed any opinion on the merits of the case. All rights and contentions of the parties are reserved, and shall be considered by the Magistrate, in accordance with law.

14. With the above directions, the present petition is disposed of.

SANJEEV NARULA, J

JANUARY 21, 2025

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