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

\+ CRL.M.C. 5061/2025

M/S. SANGAR OVERSEAS & ORS. .....Petitioners

Through: Mr. Vasu Bhushan, Mr. Ashish Upadhayay, Mr. Nipun Bhushan, Advocates

versus

SANJAY JINDAL .....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **30.07.2025**

<u>CRL.M.A. 21900/2025 (*Exemption*)</u>

1. Exemption is granted, subject to all just exceptions.

2. The Petitioner shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.

3. Accordingly, the application stands disposed of.

<u>CRL.M.C. 5061/2025 & CRL.M.A. 21901/2025 (*for stay*)</u>

4. The present criminal miscellaneous petition filed under Sections 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023[1] (formerly 482 of the Code of Criminal Procedure, 1973[2]) is directed against order dated 5th April, 2025[3] passed by ASJ-03, Central District, Tis Hazari Courts, Delhi in Criminal

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[1] "BNSS"
[2] "CrPC"
[3] "the impugned order"

Revision No. 635/2023 titled "***M/s. Sangar Overseas and Others vs. Sanjay Jindal***". By the said order, the Revisional Court upheld the directions issued by the Metropolitan Magistrate on 10th October, 2023, to the Petitioners (accused persons) to furnish the account statement, ledger entries of Petitioner No. 1 (the accused firm), and the corresponding taxation documents pertaining to the disputed transaction.

5. Briefly stated the facts of the case are as follows:

5.1. The Respondent, on behalf of the Complainant firm, Jindal Fashion, instituted a compliant under Section 200 Cr.P.C. read with Sections 138, 141 and 142 of the Negotiable Instruments Act, 1881,[4] alleging that Petitioner No. 1, a partnership firm, through its partners, Petitioner No. 2 and 3, induced the Complainant to supply fabric by representing themselves as manufacturers and exporters of readymade garments. It was further assured that payments would be made within seven days of delivery, failing which interest at the rate of 21% per annum would be payable on delayed sums.

5.2. Relying on these representations, the Complainant claims to have supplied goods to the Petitioners from the year 2012 onwards. Towards discharge of the outstanding liability arising from such transactions, the Petitioners issued three cheques bearing No(s). 374828, dated 10th July, 2017 for a sum of INR 3,28,535/-; No. 374829 dated 11th July, 2017, for sum of INR 5,72,704/-; and No. 374830, dated 12th July, 2017, for a sum of INR 5,46,608/-. However, all of these cheques were dishonoured upon presentation, with the remark 'Payment Stopped by Drawer' *vide* memo dated 18th August, 2017. Despite the issuance of a statutory demand notice

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[4] "NI Act"

dated 16th September, 2017, the Petitioners failed to make payment, leading to the filing of a complaint under Section 138 of the NI Act.

5.3. Upon consideration of pre-summoning evidence, the Trial Court took cognizance of the above offence under Section 138 NI Act *vide* order dated 5th December, 2017, and issued summons to the Petitioners. Thereafter, notice under Section 251 Cr.P.C. was framed *vide* order dated 2nd May, 2022, and the respondent was examined as CW-1.

5.4. During the course of cross-examination of CW-1, the Trial Court, in exercise of powers under Section 165 of the Indian Evidence Act, 1872[5], passed an order dated 10th October, 2023 directing the Petitioners to produce their account statements, ledger, and taxation records relating to the transaction in question.

5.5. The Petitioners moved an application before the Trial Court seeking recall of the order dated 10th October, 2023; however, the said application was dismissed.

5.6. Aggrieved, the Petitioners preferred a revision petition before the Court of the Additional Sessions Judge-03, Central District, Tis Hazari Courts, seeking to set aside the order dated 10th October, 2023. The Revisional Court, however, dismissed the petition and upheld the direction issued by the Trial Court *vide* the impugned order dated 5th April, 2025, giving rise to the present petition.

6. Counsel for the Petitioners urges the following grounds in support of the present petition:

6.1. The direction issued by the Trial Court requiring the accused to produce documents violates their right to remain silent under Article 20(3) of the Constitution. It is urged that an acused cannot be compelled to disclose or produce material that may potentially be used to establish guilt.

6.2. The invocation of Section 165 of the Indian Evidence Act, 1872, is untenable in the present context. Such power could not have been exercised at a stage when the Complainant's cross-examination was still underway, and particularly in the absence of the accused having entered the witness box.

6.3. The impugned direction runs contrary to the well-established principles of criminal jurisprudence, whereby the burden of proof lies entirely upon the prosecution or complainant. The accused cannot be compelled, directly or indirectly, to assist the complainant in proving his case, especially by producing documents that may compromise the defence.

6.4. The Petitioners had categorically informed the Trial Court that the documents in question are not in their custody, having been taken over by the Bank in independent proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. This fact, it is submitted, was overlooked by the Trial Court while issuing the direction.

6.5. The direction was issued at a premature stage and without proper reasoning or application of mind, causing serious prejudice to the defence.

7. Heard. The Revisional Court, upon a comprehensive evaluation of the challenge to the Trial Court's direction dated 10th October, 2023, declined to interfere with the said order for the following reasons:

> *"14. Ergo, in light of the aforenoted judicial dictates and being cognizant of the legal provisions as well as the facts and circumstances brought forth on record, this Court would now proceed with the*

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[5] "IEA"

determination of the rival contentions of Ld. Counsel for the parties. As aforenoted, one of the primary objections of the Ld. Counsel for the revisionists to the impugned order is that by virtue of the said order, Ld. Trial Court has directed the accused/revisionists to produce self-incriminating material. In particular, as per the Ld. Counsel, the impugned order violates article 20(3) of the Constitution. However, as aforenoted, mere direction of Ld. Trial Court under the impugned order to the revisionists/accused to produce its account statement and ledger along with the taxation details relating to the transaction in dispute, would not, in the considered opinion of this Court, be violative of Article 20(3) of the Constitution in the instant case, in light of the aforenoted judicial dictates, in particular that under ***Kathi Kalu Oghad Case (Supra.)****. Needless to reiterate that the law is settled that self-incrimination, under the said provision, denotes, conveying of an information based upon the personal knowledge of such a giver and that mere mechanical production of documents in Court, which may throw a light on any of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge, cannot fall within the proscription of Article 20(3) of the Constitution. Needless to reiterate and accentuate that the revisionists account statement, ledger and taxation details relating to the transaction in dispute, in the considered opinion of this Court are not information based on personal knowledge of the revisionists herein and is per se nor self-incriminatory or sufficient to bringforth the conviction of an accused, so as to be barred under Article 20(3) of the Constitution. In fact, the facts of the present case, clearly align and are covered under the decision of the Hon'ble High Court in* ***M/s. Kuriland (P.) Ltd. & Anr. v. P.J. Thomas & Anr., (Supra.)****, wherein the Hon'ble Court unmistakably observed that mere production of a document without compelling the accused to be a witness as such, will not amount to testimonial compulsion within the meaning of Article 20(3) of the Constitution, even if such directions are made towards an accused (or to accused's accountant as in the said case, though the documents were in fact under the custody of such an accused). Ergo, it is reiterated that the said contention falls flat before this Court in view of the persistent and unambiguous avowal of superior courts as well as in light of the correct interpretation of words, 'self-incrimination' under Article 20(3) of the Constitution.*

15. In so far as the contention of Ld. Counsel for the revisionists pertaining to wrongful exercise of discretion under Section 165 of the Evidence Act is concerned, same too fails to impress this Court in view of explicit terms of the said provision. In this regard, it is reiterated that Ld. Counsel for the revisionists has vehemently asserted that since the revisionists were not being examined by the Ld. Trial Court at the time when the impugned order came to be passed, such an order/discretion was violative of the explicit terms under Section 165 Evidence Act. However, in this regard, this Court reiterates that a conscientious perusal of Section

165 Evidence Act demonstrates that the said provision grants the court, wide discretion/broad power to ask any question, at any time, of any person, whether a witness or not and order the production of documents or things, to discover or obtain proof of relevant facts. Clearly, the only limitation under Section 165 Evidence Act is that envisaged under the said provision, however, as aforenoted, does not relate to the stage at which such discretion is exercised or the person to whom, such directions are made. Undoubtedly, the objective behind the said provision is to facilitate Judge in reaching at the ultimate truth. In other words, Section 165 of the Evidence Act, confers ample power on courts to interfere and control conduct of trial properly, effectively and in a manner as prescribed by law, whereby, court does not sit as a mute spectator or an umpire, rather, takes an active part within the boundaries of law, for reaching at the eventual truth. Quite remarkably, it is with this understanding that the Hon'ble Supreme Court as early as in Ram Chander v. State of Haryana, 1981 (3) SCC 191, remarked in this context as under;

> *"... What is the true role of a judge trying a criminal case? Is he to assume the true role of a referee in a football match or an umpire in a cricket match, occasionally answering, as Pollock and Maitland (Pollock and Maitland: The History of English Law) point out, the question 'How is that', or, is he to, in the words of Lord Kenning 'drop the mantle of a judge and assume the role of an advocate?(2) Is he to be a spectator or a participant at the trial? Is passivity or activity to mark his attitude? If he desires to question any of the witnesses, how far can he go? Can he put on the gloves and 'have a go' at the witness who he suspects is lying or is he to be soft and suave? These are some of the questions which we are compelled to ask ourselves in this appeal on account of the manner in which the judge who tried the case put questions to some of the witnesses.*
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> *The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive element entering the trial procedure. If a criminal court is to be an effective instrument in dispensing justice,* ***the presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth****. As one of us had occasion to say in the past.*
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> *We may go further than Lord Denning and say that* ***it is the duty of a judge to discover the truth and for that purpose he may "ask any question, in any form, at any time, of any witness, or of the***

*<u>**parties, about any fact, relevant or irrelevant**</u>" (Sec. 165Evidence Act). But this he must do, <u>**without unduly trespassing upon the functions of the public prosecutor and the defence counsel, without any hint of partisanship and without appearing to frighten or bully witnesses**</u>. He must take the prosecution and the defence with him. The Court, the prosecution and the defence must work as a team whose goal is justice, a team whose captain is the judge. The judge, 'like the conductor of a choir, must, by force of personality, induce his team to work in harmony; subdue the raucous, encourage the timid, conspire with the young, flatter and old'..."*

(Emphasis supplied)

16. Lastly, the contention of Ld. Counsel for the revisionists that impugned order was passed by the Ld. Trial Court oblivious to the contention of the Ld. Counsel for the revisionists that after huge losses all the assets of the revisionists were taken over by the Bank under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002/SARFASI Act and that no documents were in the possession of the revisionists. Correspondingly, it is averred by the Ld. Counsel that Ld. Trial Court could not have directed the revisionists to prove the case of the complainant/respondent by producing the documents, which relate to business transactions, concluded five years prior to the dispute in question. However, it is noted in respect of the same that the said contentions appear to have been raised for the first time before this Court in the instant revision, which can only be considered by the Ld. Trial Court at appropriate stage of the proceedings and in the considered opinion of this Court, no sufficient for this Court to reach a conclusion of any irregularity, impropriety or palpable error under the impugned order.

17. Consequently, in conspectus of the above as well as from a meticulous review of the impugned order, it is observed that the Ld. Trial Court, while passing the same has duly considered all the relevant facts and circumstances, besides passed a reasoned and speaking dictate, in terms of settled law and judicial precedents as aforenoted. Clearly, Ld. Counsel for the revisionists/revisionists has/have not been able to show any reasonable ground(s) for interfering with the impugned order by this Court, at this stage. Needless to reiterate, revisional jurisdiction can be exercised only when there is glaring defect in procedure or there is manifest error of law and consequently there has been a flagrant miscarriage of justice. However, when the impugned order is scrupulously perused, in light of the scope of the provisions under Section 397 Cr.P.C., this Court reiterated that no illegality, impropriety, palpable error/defect and/or irregularity is forthcoming/demonstrable by the revisionists under the said order/impugned order.

18. Consequently, in light of the foregoing discussion and keeping in view the aforenoted judicial precedents, law as well as the submissions *addressed before this Court, it is reiterated that no illegality, impropriety and/or irregularity is demonstrable by the revisionists in the order dated 10.10.2023/impugned order, passed by Ld. MM-01 (NI Act), Central Tis Hazari Courts, Delhi in case bearing, '**Sanjay Jindal v. Sangar Overseas, Ct. Case No. 884,2018**', directing the petitioners/accused/revisionists to bring the account statement and ledger of revisionist no. 1, along with the taxation details relating to the transaction in dispute, with an advance copy thereof to the opposite side.*

19. Conclusively, in light of the above, this Court unambiguously observes that present revision petition deserves to be dismissed as devoid of merits and is hereby, accordingly, dismissed.

20. Trial Court Record be sent back along with a copy of this order.

21. Revision file be consigned to record room after due compliance."

8. The Court finds no infirmity in the impugned orders warranting interference under Section 528 BNSS.

9. Article 20(3) of the Constitution guarantees that *"no person accused of any offence shall be compelled to be a witness against himself."* However, this protection is not absolute in the context of production of documents by an accused. The law draws a distinction between (i) testimonial compulsion involving disclosure of personal knowledge, and (ii) the mechanical production of existing documents. The Supreme Court in ***State of Bombay v. Kathi Kalu Oghad***,[6] held that compulsion under Article 20(3) refers to "imparting personal knowledge of the person giving the information," and that mere production of pre-existing documents does not fall within the ambit of "being a witness" against oneself.

10. More recently, in ***Selvi v. State of Karnataka***[7], the Supreme Court reaffirmed this principle by noting that documentary evidence voluntarily maintained in the course of business, and not prepared in anticipation of prosecution, does not attract Article 20(3) protection merely because the

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[6] 1961 AIR 1808

person called upon to produce them is an accused. In the present case, the documents in question: ledger accounts, bank statements, and taxation filings, are not personal confessions or testimonial statements but rather pre-existing business records. Their production does not amount to compelled self-incrimination under Article 20(3). Thus, no infirmity arises from the Trial Court's direction.

11. Further, this Court also does not find merit in the Petitioner's contention regarding misapplication of Section 165 of the IEA. For the sake of convenience, the said provision is being reproduced:

> ***165. Judge's power to put questions or order production.*** *— The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:*
>
> *Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:*
>
> *Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.*

A plain reading of the aforenoted provision makes it evident that Section 165 grants the Court wide discretion to ask any question, at any time, of any witness or party, and to order the production of documents, in order to

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[7] 2010 (7) SCC 263

discover or obtain proper proof of relevant facts. The only limitations under Section 165 are those expressly set out in the provisos to the Section, which do not confine the exercise of such discretion to any specific stage of the proceedings. The objective behind this provision is to facilitate the Judge in reaching the ultimate truth and to ensure that the Court does not act as a passive observer but takes an active role in the pursuit of justice, within the bounds of the law.

12. In the instant case, the Trial Court issued the direction during the cross-examination of CW-1, the Complainant. The documents sought, pertain to the commercial transactions which form the basis of the complaint under Section 138 NI Act. Whether the transaction existed, whether there was any liability, and the nature of payments, these are all matters central to the trial. The purpose of directing the accused to produce documents was to streamline the scope of the trial by identifying the specific entries in dispute, particularly given that the business relationship between the parties spanned several years and involved numerous transactions. Such a direction is not intended to invert the burden of proof but to assist the Court in gaining clarity and precision in the adjudication of the controversy.

13. The Petitioners' contention that the firm's records had been taken over by a bank under SARFAESI proceedings was not raised contemporaneously before the Trial Court. Even assuming such a situation, the Petitioners are free to bring this factual assertion to the attention of the Trial Court during the compliance stage. The impugned direction does not, by itself, prevent the Petitioners from asserting their inability to comply, nor does it cast an adverse inference at this stage.

14. In view of the foregoing, this Court does not find any justifiable

grounds to warrant interference with the concurrent findings of the courts below. The impugned orders do not suffer from any legal infirmity or perversity warranting interference under the supervisory revisional jurisdiction of this Court.

15. Accordingly, the petition is dismissed. Pending applications, if any, also stand disposed of.

SANJEEV NARULA, J

JULY 30, 2025
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