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

+ **CRL.REV.P.(NI) 5/2025**

SANGRAM SINGH CHEEMA

.....Petitioner

Through: Dr. G.V Rao, Sr. Adv. with Mr. A.K.
Upadhyay, Mr. G. Arudhra Rao,
Advts.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: None

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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03.02.2025

CRL.M.A. 274/2025(for exemption)

Allowed, subject to just exceptions.

Accordingly, the application stands disposed of.

CRL.REV.P.(NI) 5/2025

1. The present petition is filed under section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking setting aside of the impugned order dated 10.09.2024 passed in Criminal Appeal No. 110/2023.

1.1. It is stated that the Petitioner herein had moved an application before the appellate court under Section 391 of the Criminal Procedure Code, 1973 (Cr.P.C.) seeking leave to lead additional evidence by placing on record a pen-drive containing alleged conversation(s) between the Appellant, the Respondent No. 2 and one Sanjay Saxena.



1.2. It is stated that the said application has been dismissed by the appellate Court vide the impugned order. The key observations of the appellate Court in the impugned judgment read as under:

- i. That the provisions of Section 391 Cr.P.C. should be invoked only for meeting the ends of justice and not for any other reason. That a party cannot be allowed to adduce the evidence at the appellate stage when it has failed to do so during the trial despite opportunities.
- ii. That the appellant i.e., the Petitioner herein in his testimony before the Trial Court did not mention anywhere about any such conversation(s) contained in the pen-drive. That even if the appellant was not in possession of the pen-drive, he could have mentioned about the conversation(s) contained therein and stated in his testimony that the pen-drive is beyond his access.
- iii. That a party can only be allowed to adduce evidence at appellate stage in cases where the said evidence was not within his knowledge.
- iv. That a perusal of the copy of the evidence affidavit served by the Appellant on Respondent No. 2 before the Trial Court shows that Appellant had referred to the audio recording and its transcripts as exhibit 4/4 (colly); however, elected not to tender the same in evidence.

1.3. It is stated that the Criminal Appeal No. 110/2023 was filed under Section 374 Cr.P.C challenging the judgment of conviction and sentence dated 27.05.2023 passed by the Trial Court in CC No. 2706/2019. It is stated



that vide the order dated 27.05.2023 the Petitioner herein was convicted under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) and was sentenced to six (6) months of Simple Imprisonment, along with a compensation payment of Rs. 1,10,00,000/- to the Complainant i.e., Respondent No.2.

Arguments of the Petitioner

2. Learned counsel for the Petitioner states that the Respondent No.2 was his employee and he had access to his briefcase in which the cheque leaves were kept. It is stated that the Respondent No.2 unauthorizedly took out a cheque leaf from the said briefcase and misused the same which is subject matter of the dispute.

2.1. He states that Petitioner got prepared evidence by way of the affidavit containing all the evidence that he had available at the time of the trial which was filed. He states that despite due diligence during the trial the Petitioner was unable to present the whole evidence and the Trial Court refused to take evidence by way of affidavit and recorded the Petitioner's statement under Section 313 Cr.P.C.

2.2. He states that during the recording of Petitioner's statement under Section 313 of Cr.P.C. he missed mentioning about the transcript of calls between the Petitioner and Respondent No.2 and one Mr. Sanjay Saxena. He states that the backup of those call recordings was kept in a pen-drive which was kept in an almirah at his matrimonial home, which the Petitioner could not access because due to the family dispute with this spouse he was denied access to the said matrimonial home. He states that the Petitioner got back the possession of the said pen-drive on 24.08.2023 after his disputes were settled with his spouse.



2.3. He states that by the time the Petitioner got hold of the pen-drive the matter was at the appellate stage and that is when the Petitioner moved an application under Section 391 Cr.P.C. to submit to the Court two (2) relevant call recordings.

2.4. He states that the mention of a call recording in his evidence affidavit was about a different call, from the two (2) conversation(s) which were now sought to be placed on record by the application under Section 391 Cr.P.C. He states that therefore, the said two (2) call recordings constitutes a distinct and newly acquired piece of evidence.

2.5. He states that in the impugned order the appellate Court has disregarded the fact that the call recordings and the transcripts are crucial for granting a fair trial to the Petitioner.

2.6. He states that the appellate Court erroneously appreciated the contention of the Respondent No.2 that the Petitioner was fully aware of the pen-drive during the trial and remained in possession of it.

Analysis and conclusion

3. This Court has heard the learned counsel for the Petitioner and perused the record.

4. Before adverting to the facts of the present case it would be imperative to refer to the judgments which would enunciate the scope of exercising the power under Revisional Jurisdiction by this Court.

4.1 The Supreme Court in the case of **Pranab Kumar Mitra v. State of West Bengal**¹, while referring to revisional power of the High Court observed that the revisional power is one which is discretionary in nature

¹ AIR 1959 SC 144.



and should only be exercised to ensure that justice is done by the Courts below.

“indeed, it is a discretionary power which has to be exercised in aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon the facts and circumstances of that case. The revisional powers of the High Court vested in it by Section 439 of the Code, read with Section 435, do not create any right in the litigation, **but only conserve the power of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence, and that subordinate criminal Courts do not exceed their jurisdiction, or abuse their powers vested in them by the Code. The High Court is not bound to entertain an application in revision, or having entertained one, to order substitution in every case.**”

(Emphasis supplied)

5. Adverting to the facts of the present case, the Petitioner herein filed an application before the appellate Court under Section 391 of the Cr.P.C. for placing on record a pen-drive containing the alleged conversations between the Petitioner herein, one Mr. Sanjay Saxena and Akash Gupta i.e., Respondent No.2. It is stated that the said conversations would show that Respondent No. 2 was only an employee of the Appellant not his partner as alleged.

6. The appellate Court has returned a finding that during the course of trial before the learned Magistrate the Petitioner herein did not mention either about the alleged lack of access to the pen-drive or the existence of the alleged conversation(s) contained therein.

7. The question which the Petitioner is unable to answer is that even if the Petitioner was not in possession of the pen-drive containing the conversation(s), why did the Petitioner not mention about existence of the said conversation(s) and the pen drive during whole trial. The act of the Petitioner of not making any efforts to even aver about the said conversation



and the pen-drive before the Trial Court and then trying bring it on record at the appellate stage is nothing but an after-thought intended to delay the process.

8. The explanation offered by the Petitioner is that the said pen-drive containing the alleged conversations was lying in the matrimonial house, to which he got access only on 24.08.2023 does not commend itself to this Court. The appeal was pending since 24.06.2023 but application under Section 391 Cr.P.C. has been filed before the Appellate Court belatedly on 11.03.2024 (i.e., more than 7 months after the Petitioner had allegedly regained access to the house). Thus, this Court is of the opinion that filing of this application for placing the pen-drive has no nexus with the alleged lack of access to the matrimonial house and the said explanation is just a propped-up excuse. The principles of natural justice enshrined in the statute so as to permit the appellate Court to accept evidence at the appellate stage is not intended to be an instrument of abuse in the hands of the litigant.

9. This Court is of the opinion that in the light of the material available before the appellate Court, the said Court was right in declining to allow the application of the Petitioner filed under Section 391 of the Cr.P.C. and returning a finding that the Petitioner had been given sufficient opportunities by the Trial Court to lead evidence and the Petitioner has failed to furnish any justification for not filing the said pen-drive at the said stage.

10. The Supreme Court in **Rajeswar Prasad Misra v. State of West Bengal**² relied upon by the appellate Court has been held that the powers under Section 391 Cr.P.C. are exceptional and are to be exercised by the Appellate Court only when in its opinion further evidence is required; and



the said provision cannot be invoked by the litigant to prolong the appeal proceedings.

11. This Court does not find it appropriate in the revision jurisdiction to interfere in the order of the appellate Court because no patent illegality has been shown by the Petitioner herein in the order of the appellate Court and since the appellate court has already appreciated whole material placed before it and this Court cannot reappreciate the said evidence in these proceedings.

12. With the aforesaid observations the revision petition stands dismissed along with the pending applications if any.

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 3, 2025/sk

Click here to check corrigendum, if any

² AIR 1965 SC 1887.