

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.890 of 2025

Arising Out of PS. Case No.-126 Year-1999 Thana- KOTWALI District- Patna

Shahnaz Yunus W/o Late Yasub Yunus @ Md. Yasub Yunus, Resident of
Yunus Campus, S.P. Verma Road, PS- Kotwali, Distt.- Patna.

... .. Petitioner

Versus

1. The State of Bihar.
2. Yasmin Bano W/o Late Mr. Md. Yusuf Yunus R/o Yunus Campus, S.P. Verma Road, P.S.- Kotwali, Distt.- Patna.
3. Md. Waqar Yunus S/o Late Mr. Md. Yusuf Yunus R/o Yunus Campus, S.P. Verma Road, P.S.- Kotwali, Distt.- Patna.
4. Md. Anzar @ Md. Anzar Imam S/o Late Zafar Imam R/o road no. 8, near stepping stone school, Mohalla - Alinagar, P.S.- Phulwarisharif, Distt.- Patna, Presently residing at Yunus Campus, S.P. verma Road, P.S.- Kotwali, Distt.- Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. S.M. Asharaf, Sr. Advocate Mr. Abu Bakar, Advocate
For the State	:	Mr. Binod Kumar, APP
For the O.P. No. 4	:	Mr. Ajay Kumar Sinha, Advocate Mr. Vishwajeet Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 16-02-2026

Heard learned counsel for the parties.

2. The instant revision petition has been filed against the order dated 17.07.2025 passed by the learned Additional Sessions Judge-VIII, Patna, in Criminal Appeal No. 164 of 2021 (CIS No. 164 of 2021), arising out of judgment and order dated 05.03.2021 in Trial No. 806 of 2021 passed by the learned Additional Chief Judicial Magistrate-XIII, Patna, in connection with Kotwali P.S. Case No. 126 of 1999, whereby and whereunder the learned Appellate Court rejected the



application dated 18.06.2025 filed under Section 391 of the Code of Criminal Procedure (for brevity, “Cr.P.C.”).

3. Brief facts of the case are that the petitioner is informant / victim of Kotwali P.S. Case No. 126 of 1999, which has been registered with allegation against opposite party nos. 2 to 4, as the accused persons attacked the informant and her son and the assailants also snatched gold chain of the informant weighing two *bhars*. Chargesheet was submitted on 31.05.1999. However, cognizance was taken under Section 504 of the Indian Penal Code, though FIR was lodged under Sections 452, 324, 323, 504 and 379 of the Indian Penal Code. On 30.03.2001, charges were framed under Section 504 of the Indian Penal Code and summons to private witnesses were issued. Four private witnesses turned hostile. It also appears that trial remained pending from 25.08.2005 till 07.01.2015 stated to be due to continuous non-appearance of one of the co-accused person, namely Yusuf Yunus. The death report of the accused was submitted on 07.01.2015 and thereafter, the matter was again posted for prosecution evidence. The learned trial Court closed the prosecution evidence on 19.03.2015 and on the same day, the prosecution filed an application under Section 311 of the Cr.P.C. for summoning and examining three key witnesses.



The application was allowed on 30.04.2015 and the witnesses named in the application were examined between 16.05.2015 and 10.09.2015. Learned trial Court thereafter issued order for summoning of official witnesses on 28.09.2015, but the actual summons were issued much later, on 05.01.2016. No service report was received regarding summons. It appears that the learned trial Court, thereafter, closed the prosecution evidence on 06.04.2016. The petitioner highlighted the approach of the learned trial Court by filing another application dated 27.04.2016 under Section 311 of the Cr.P.C., pointing out that the summons to Medical Officer (for brevity, "MO") failed because they were sent to his old address at P.M.C.H., Patna while he has been transferred to A.N.M.M.C.H., Gaya. However, the learned trial Court rejected the application on 18.05.2016. Against the said order, the petitioner preferred a Criminal Revision No. 348 of 2016, but the same was also dismissed on 17.12.2016. On 20.02.2017, the petitioner filed application under Section 2016 of the Cr.P.C., seeking alteration of the charge to include the graver offences disclosed in the FIR. The rejoinder was filed on 19.04.2017 and the learned trial Court again rejected the application holding that there was no material on record warranting alteration of charges. Aggrieved



by this order, the petitioner preferred Criminal Revision No. 438 of 2017 before the learned Sessions Court, but the said revision was subsequently dismissed as withdrawn on 19.07.2017. Again the petitioner filed a petition under Section 259 of the Cr.P.C. on 11.10.2017, which was kept pending for disposal for more than two years and was finally rejected on 24.06.2020. Lastly, on 05.03.2021, the learned Additional Chief Judicial Magistrate-XIII, Patna, passed a judgment acquitting the accused persons. The judgment of 05.03.2021 was assailed by the informant / petitioner before the learned Sessions Court, Patna by filing Criminal Appeal No. 164 of 2021. The petitioner filed an application before the learned Appellate Court under Sections 391 of the Cr.P.C. on 18.06.2025. However, the Appellate Court by its order dated 17.07.2025, rejected the said application. This dismissal order is under challenge before this Court.

4. Learned senior counsel appearing on behalf of the petitioner submits that the order of the learned Appellate Court rejecting the application of the petitioner filed under Section 391 of the Cr.P.C. read with Section 132 of B.N.S.S. is illegal, perverse and contrary to settled legal principles. The learned Appellate Court failed to appreciate that the non-examination of Investigating Officer (for brevity, "IO") and MO



was due to the failure of the learned trial Court to ensure proper service and is not attributable to the prosecution. The learned Appellate Court, further failed to appreciate that non-examination of IO and MO, was due to procedural drawback as the learned trial Court failed to take any coercive steps under Sections 62-67 or Section 70 of Cr.P.C. after summons remained unserved. The petitioner, from time to time, filed appropriate applications for examination of witnesses and also for alteration of charge, though the said applications were not entertained by the learned trial Court, except one. The learned trial Court failed to act even after prosecution filed an application under Section 311 of the Cr.P.C., pointing out the correct address of the MO and requesting for issuance of fresh summons. But again, this application was arbitrarily rejected on 18.05.2016 despite correct address provided by the petitioner.

5. Learned senior counsel further submits that the petitioner has all along been showing due diligence in the matter and has taken all steps to put forth his case before the learned trial Court. Learned senior counsel further submits that Patna High Court in the case of *Md. Naseem Raja Rehmani v. State of Bihar*, reported in *2017 (2) PLJR 382*, held that additional evidence at appellate stage is permissible, in case of failure of



justice. However, such power must be exercised sparingly and only in exceptional suitable cases where the Court is satisfied that directing additional evidence would serve the interest of justice. Such an application for taking additional evidence must be decided objectively, just to cure the irregularity. The primary objective of Section 391 of the Cr.P.C. is the prevention of guilty man's escape from careless or ignorant action from part of the prosecution. Learned Appellate Court further failed to appreciate that adducing additional evidence of important witnesses will further open the scope of its wide powers under Section 386 of the Cr.P.C. read with Section 216, to alter or modify charges. The Hon'ble Supreme Court in the case of ***Chandra Pratap Singh v. State of M.P.***, reported in **(2023) 10 SCC 181**, has categorically held that in view of the wide powers conferred under Section 386 of the Cr.P.C., even an Appellate Court is empowered to invoke Section 216 for altering or modifying the charge. Learned senior counsel further submits that despite filing timely applications under Section 311 of the Cr.P.C. and later on under Section 391 of the Cr.P.C., the petitioner was denied justice due to mechanical and non-judicial approach of the learned trial Court and the Appellate Court. The Court did not consider for a moment that the delay in securing



the IO and MO was caused entirely due to trial Court's failure to invoke appropriate provisions of Cr.P.C. to compel their attendance.

6. Learned senior counsel further refers to the case of *Ajitsinh Chehuji Rathod v. State of Gujarat & Ors.*, Criminal Appeal No. 478 of 2024 (Arising out of SLP (Crl.) No. 16641 of 2023), reported in **(2024) 4 SCC 453**, and submits that law is well settled that power to record additional evidence under Section 391 of the Cr.P.C. should only be exercised when the party making such request was prevented from presenting 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 non-recording of such evidence may lead to failure of justice. Learned senior counsel thus submits that at every possible occasion, appellant / petitioner tried to bring the evidence on record before the learned trial Court though she was unsuccessful in her endeavour so, it could not be said that there was no due diligence.

7. Learned senior counsel lastly submits that if the evidence is not allowed at this (appellate) stage, the same might result in failure of justice. Therefore, the present revision



petition needs to be allowed.

8. Learned counsel appearing on behalf of opposite party nos. 2 to 4 vehemently contends that there is no infirmity in the impugned order and the same is appropriate and correct. He submits that the petitioner got ample opportunity of adducing evidence before the learned trial Court, but failed to adduce the evidence. The learned trial Court, after giving ample opportunity to the petitioner, closed the evidence. On 19.03.2015, the petitioner filed an application under Section 311 of the Cr.P.C., which was allowed. But, even then the petitioner failed to adduce evidence and subsequently, due to inability of the prosecution to produce the evidence, the evidence was again closed on 27.04.2016. The petitioner again filed a petition under Section 311 of the Cr.P.C., which was rejected. Against the rejection of her petition, the petitioner approached the learned Sessions Court by filing a revision petition, which was dismissed *vide* order dated 17.12.2016 by the learned Sessions Judge, Patna. Learned counsel further submits that the petitioner had employed all tricks in her bag to delay the matter and linger on the proceeding. The present revision petition challenging the order passed by the learned Appellate Court under Section 391 of the Cr.P.C. is similar ploy by the petitioner. Learned counsel



thus submits that there is no merit in the instant revision petition
ad the same be dismissed.

9. I have given my thoughtful consideration to the
rival submissions advanced by the parties and perused the
record. Section 391 of the Cr.P.C. 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.”

Thus, this provision empowers the Appellate Court
to allow additional evidence at the appellate stage by itself or
direct it to be taken by a Magistrate and when the Appellate
Court is a High Court, by a Court of Session or a Magistrate,
provided the Appellate Court thinks additional evidence to be
necessary.

10. In the case of ***Zahira Habibullah Sheikh &***



Anr. v. State of Gujarat & Ors., reported in **(2004) 4 SCC 158**,
the Hon'ble Supreme Court dealt with the scope of Section 391
of the Cr.P.C. *in extenso* and held as follows:

“21. Section 391 of the Code is intended to subserve the ends of justice by arriving at the truth and there is no question of filling of any lacuna in the case on hand. The provision though a discretionary one is hedged with the condition about the requirement to record reasons. All these aspects have been lost sight of and the judgment, therefore, is indefensible. It was submitted that this is a fit case where the prayer for retrial as a sequel to acceptance of additional evidence should be directed. Though, retrial is not the only result flowing from acceptance of additional evidence, in view of the peculiar circumstances of the case, the proper course would be to direct acceptance of additional evidence and in the fitness of things also order for a retrial on the basis of the additional evidence.

47. Section 391 of the Code is another salutary provision which clothes the courts with the power to effectively decide an appeal. Though Section 386 envisages the normal and ordinary manner and method of disposal of an appeal, yet it does not and cannot be said to exhaustively enumerate the modes by which alone the court can deal with an appeal. Section 391 is one such exception to the ordinary rule and if the appellate court considers additional evidence to be necessary, the provisions in Section 386 and Section 391 have to be harmoniously considered to enable the appeal to be considered and disposed of also in the light of the additional evidence as well. For this purpose it is open to the appellate court to call for further evidence before the appeal is disposed of. The appellate court can direct the taking up of further evidence in support of the prosecution; a fortiori it is open to the court to direct that the accused persons may also be given a chance of adducing further evidence. Section 391 is in the nature of an exception to the general rule and the



powers under it must also be exercised with great care, especially on behalf of the prosecution lest the admission of additional evidence for the prosecution operates in a manner prejudicial to the defence of the accused. The primary object of Section 391 is the prevention of a guilty man's escape through some careless or ignorant proceedings before a court or vindication of an innocent person wrongfully accused. Where the court through some carelessness or ignorance has omitted to record the circumstances essential to elucidation of truth, the exercise of powers under Section 391 is desirable.

49. There is no restriction in the wording of Section 391 either as to the nature of the evidence or that it is to be taken for the prosecution only or that the provisions of the section are only to be invoked when formal proof for the prosecution is necessary. If the appellate court thinks that it is necessary in the interest of justice to take additional evidence, it shall do so. There is nothing in the provision limiting it to cases where there has been merely some formal defect. The matter is one of discretion of the appellate court. As reiterated supra, the ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the Public Prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the court in the discharge of its judicial functions.

50. In Rambhau v. State of Maharashtra [(2001) 4 SCC 759 : 2001 SCC (Cri) 812] it was held that the object of Section 391 is not to fill in lacuna, but to subserve the ends of justice. The court has to keep these salutary principles in view. Though wide discretion is conferred on the court, the same has to be exercised judicially and the legislature had put the safety valve by requiring recording of reasons."

11. The Hon'ble Supreme Court in the case of ***Ajitsinh Chehuji Rathod (supra)*** in paragraph no. 8 held as



under:

“8. 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 391CrPC 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 non-recording of such evidence may lead to failure of justice.”

Thus, the Hon’ble Supreme Court interpreted Section 391 of the Cr.P.C. in the manner that this exercise of allowing additional evidence at appellate stage is permissible when the party making such request was prevented from presenting the evidence in the trial despite due diligence being exercised. Taking on additional evidence is also permissible if the facts giving rise to such prayer came to light at a later stage during the pendency of appeal with further condition that non-recording of such evidence may lead to failure of justice.

12. Now, considering the aforementioned decisions of the Hon’ble Supreme Court, *vis-à-vis* the statutory provision, it is very much apparent that Section 391 is an exception to general rule and for this reason, it should be exercised sparingly. This provision appears to be *pari materia* with Order 41 Rule 27 of the Code of Civil Procedure, and due diligence is expected from parties making the request for additional evidence. In the



instant case, the learned senior counsel has addressed the point that the petitioner has been diligent all along and has filed application under Section 311 of the Cr.P.C. and even went to the revisional Court against rejection of her application filed under Section 311 of the Cr.P.C. But I am afraid this submission is simply misconceived. The petitioner exercised her right and made an attempt to get the additional evidence before the learned trial Court. But her prayer was rejected and the rejection became final. Filing of an application under Section 391 of the Cr.P.C. by the petitioner is only trying to achieve something indirectly which the petitioner failed to achieve before the learned trial Court directly. It appears to be a colourable exercise. For this reason, I find merit in the submissions made by the learned counsel for the opposite party nos. 2 to 4 that the filing of an application under Section 391 of the Cr.P.C. was only a ploy to drag the proceedings. Considering the facts that the prosecution started way back in the year 1999 after institution of FIR in Kotwali P.S. Case No. 126 of 1999. No doubt, additional evidence can be allowed at the appellate stage, but it has to be in rare and exceptional cases only and not in a case where the petitioner had already taken recourse of law in appropriate proceeding and lost.



13. The other condition for allowing additional evidence is not present in this case, i.e. new facts coming to light giving rise to such prayer at a later stage. The learned Appellate Court has considered the conduct of the petitioner and rightly came to the finding that the appellant / petitioner has filed the application only to keep the litigation pending.

14. Hence, in the light of discussion made hereinbefore, I neither find any rare or exceptional case in favour of the petitioner to allow additional evidence nor find any infirmity in the impugned order, so as to interfere with the impugned order.

15. Therefore, I have no hesitation in holding that the present petition is devoid of merit and hence, the same is dismissed.

(Arun Kumar Jha, J)

Shahnawaz/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20.02.2026
Transmission Date	20.02.2026

