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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRMP No. 2607 of 2026

- Narayan Prasad Sahu S/o Late Mohan Lal Sahu, Aged About 54 Years R/o Village Amora, Post Jhalap, Police Station And Tehsil Tumgaon, District Mahasamund, C.G.

... Petitioner

versus

- Mithlesh Kumar Sen S/o Shivlal Sen, Aged About 43 Years R/o Village Arjuni, Post Arjuni, Tehsil Balodabazar, District Balodabazar - Bhatapara, C.G.

... Respondent

For petitioner : Ms. Poulami Das, Advocate.

Hon'ble Shri Parth Prateem Sahu, Judge

ORDER ON BOARD

07/10/2026

1. This petition under Section 528 of the Bharatiya Nagrik Suraksha Samhita, 2023 (for short “BNSS) has been filed by petitioner against the impugned order dated 19.08.2026 (Annexure P-1) passed by learned Additional Sessions Judge, Bhatapara, District Balodabazar-Bhatapara (C.G.) in Criminal Revision No. 03/2026, whereby the revision petition preferred by petitioner against the order dated 13.01.2026 passed by learned Judicial Magistrate First Class, Bhatapara, District Balodabazar-Bhatapara, rejecting the application filed by petitioner under Section 91 of Cr.P.C. seeking production/ summoning of relevant documents, has been dismissed.

2. Facts of the case, in brief, are that the respondent/complainant instituted Criminal Case No. 06/2022 against the petitioner/accused under Section 138 of the Negotiable Instruments Act, 1881, before the Court of learned

Judicial Magistrate First Class, Bhatapara, District Balodabazar-Bhatapara (C.G.). The case of the complainant is that the parties were acquainted with each other through one of petitioner's relative namely Vishnu Sahu and that, on 09.12.2020, the complainant advanced a sum of ₹3,00,000/- in cash to the petitioner on his request for his domestic requirements. According to the complainant, towards discharge of the said liability, petitioner issued cheque No. 434092 dated 20.10.2021 for ₹3,00,000/-, drawn on District Cooperative Central Bank Maryadit, Raipur, Branch Jhalap. The cheque, when presented, was dishonoured for the reason "funds insufficient". Thereafter, statutory notice was issued by the complainant and, on failure of the petitioner to make payment, the complaint under Section 138 of the Negotiable Instruments Act was instituted.

3. During course of trial, complainant examined himself and relied upon the cheque, return memo, statutory demand notice, postal receipt and tracking report. During his cross-examination, the complainant admitted that the alleged amount of ₹3,00,000/- had been paid by him in cash and that there had been no monetary transaction between the parties through their respective bank accounts.

4. Petitioner/accused has disputed the alleged loan transaction. His specific defence is that the cheque in question was not issued towards discharge of any liability of ₹3,00,000/- as alleged by the complainant, but was connected with earlier dealings between the parties and had been given as a security cheque, which was subsequently misused by the complainant. The said defence was put to the complainant in cross-examination and was also reiterated by the petitioner in his statement under Section 313 of the Code of Criminal Procedure.

5. In order to substantiate the aforesaid defence and to examine the circumstances surrounding the alleged cash transaction, the petitioner

moved an application under Section 91 of the Code of Criminal Procedure seeking production/summoning of certain documents, including the complainant's money-lending licence/certificate, income-tax-related documents and any writing or document concerning the alleged loan transaction of ₹3,00,000/-. The petitioner contended that the documents were relevant for examining the source and nature of the alleged cash advancement and for effectively establishing his defence. The said application was opposed by the complainant. The complainant stated, *inter alia*, that he was not carrying on any money-lending business and therefore did not possess any money-lending licence or certificate.

6. Learned Judicial Magistrate First Class, Bhatapara, after hearing the parties, vide order dated 13.01.2026, rejected the application under Section 91 Cr.P.C, *inter alia*, taking note of the complainant's stand that he was not engaged in money-lending business and therefore did not possess any money-lending document. Learned Magistrate further observed that the question relating to filing of income-tax return and payment of income-tax is a matter between the assessee and the Income-tax Department. Learned Magistrate accordingly held that the documents sought could not be directed to be produced by the complainant and rejected the application. The case was thereafter fixed for defence evidence.

7. Aggrieved by the aforesaid order, the petitioner preferred Criminal Revision No. 03/2026 before the learned Additional Sessions Judge, Bhatapara. Learned Revisional Court, vide order dated 19.08.2026, dismissed the revision holding that the order passed on an application under Section 91 Cr.P.C. was interlocutory in nature and, in view of Section 397(2) Cr.P.C., a revision against such order was not maintainable.

8. Learned counsel appearing for the petitioner submits that both the Courts below have failed to appreciate the nature and relevance of the documents sought by the petitioner. It is contended that the alleged transaction of ₹3,00,000/- is the very foundation of the complaint under Section 138 of the Negotiable Instruments Act and that the complainant himself has admitted that the alleged amount was paid in cash. It is therefore submitted that the documents relating to the source of the alleged amount, income-tax records, any money-lending licence and any contemporaneous writing concerning the transaction are directly relevant to the defence of the petitioner. Learned counsel further submits that the petitioner is not making any roving or fishing inquiry, but is seeking documents specifically connected with the alleged transaction which forms the basis of the prosecution. It is argued that denial of such documents has materially prejudiced the petitioner in establishing his specific defence that the cheque was issued in connection with earlier dealings as a security cheque and was subsequently misused. Learned counsel submits that learned Revisional Court erred in mechanically treating the order of the learned Magistrate as interlocutory and further erred in observing that the petitioner could obtain the documents independently. It is submitted that the impugned orders have resulted in denial of a fair opportunity to the petitioner to establish his defence and prays for setting aside the orders dated 19.08.2026 and 13.01.2026 and for allowing the application filed by the petitioner under Section 91 Cr.P.C.

9. I have heard learned counsel appearing for the petitioner and perused the pleadings, impugned orders passed by the Courts below and the other material available on record.

10. At the outset, it is necessary to keep in view the limited nature of jurisdiction exercised by this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023. The inherent jurisdiction is intended to

prevent abuse of the process of the Court and to secure the ends of justice. It is not to be exercised as a substitute for an appellate or revisional jurisdiction merely because another view of the matter may be possible.

11. In the present case, petitioner seeks production of the complainant's money-lending licence/certificate, income-tax-related documents and any writing concerning the alleged cash loan of ₹3,00,000/-. The grievance of the petitioner is on the basis that, since the complainant claims to have advanced such amount in cash and has admitted the nature of transaction to be in cash, the aforesaid documents ought to have been summoned.

12. For proper adjudication of the issue, it would be appropriate to reproduce Section 91 of CrPC, which is as under :

> "**91. Summons to produce document or other thing.**
>
> (1) Whenever any Court or any officer-in-charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.
>
> (2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.
>
> (3) Nothing in this section shall be deemed -
>
> (a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Banker's Books Evidence Act, 1891(13 of 1891); or
>
> (b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegram authority."

13. There can be no dispute that a document can be summoned under Section 91 Cr.P.C. when its production is necessary or desirable for the purposes of the inquiry or trial. However, Section 91 does not confer an unrestricted or absolute right upon an accused to summon every document which he considers potentially useful to his defence. The Court is required to examine the nature of the document sought, its relevance to the issues arising in the trial and whether its production is necessary or desirable for a just decision of the case.

14. In the case at hand, learned Magistrate considered the specific nature of the documents sought. As regards the alleged money-lending licence or certificate, the complainant had specifically stated that he was not carrying on money-lending business and, therefore, did not possess such document. In such circumstances, a direction under Section 91 Cr.P.C. to the complainant to produce a document which, according to his specific stand, does not exist in his possession cannot be issued merely on the basis of an assertion by the accused that such document ought to exist.

15. The petitioner has also relied upon the absence of any written document concerning the alleged cash loan. However, the absence of such a document is itself a circumstance which may be brought on record and tested through the evidence of the complainant and other evidence available to the parties. It does not automatically follow that the Court must, under Section 91 Cr.P.C., direct production of every document which the accused believes may support his defence. It is also significant that the petitioner has already taken a specific defence that the cheque was issued in connection with earlier dealings between the parties as a security cheque and was subsequently misused. The truth or otherwise of that defence is essentially a matter to be determined on the basis of evidence led during trial. At the stage of considering an application under Section 91 Cr.P.C., this Court would not enter into a detailed appreciation,

turning the proceeding into a mini-trial, of the complainant's evidence or record a finding as to whether the alleged loan transaction of ₹3,00,000/- is proved or disproved.

16. The learned Revisional Court has also noticed that the complainant is required to establish his case by leading appropriate evidence and that failure to produce a document which is otherwise necessary for proving his case may have its own consequences. At the same time, if the petitioner seeks to rely upon documents available with the concerned department or office, the Revisional Court has observed that certified copies thereof may be obtained from the concerned authority and placed before the trial Court. Learned Revisional Court, while dismissing the revision, principally relied upon the interlocutory nature of the order passed on the Section 91 application and the bar contained in Section 397(2) Cr.P.C. The said Court also examined the matter on merits and found no reason to interfere with the order of the learned Magistrate.

17. This Court is also of the view that the order passed by learned JMFC dated 13.01.2026 does not finally determine any substantive right of the petitioner or conclude his defence. The petitioner remains entitled to place his defence before the learned Trial Court and to lead such admissible evidence as may otherwise be available to him in accordance with law. Therefore, merely because the application under Section 91 Cr.P.C. has been rejected, it cannot be said that the petitioner has been deprived of his entire opportunity to establish his defence.

18. In the considered opinion of this Court, even when the matter is examined within the limited parameters of Section 528 BNSS, no such perversity, illegality or failure of justice is shown in the orders passed by the Courts below which would warrant exercise of the inherent jurisdiction of this Court. The petitioner could not be able to establish that rejection of the

application under Section 91 Cr.P.C. has resulted in such prejudice as would amount to abuse of the process of law or miscarriage of justice.

19. For the foregoing discussion, considering the facts and circumstances of the case, the submissions advanced by learned counsel for the petitioner, material available on record and the limited scope of interference under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, I find no ground to interfere with the impugned order dated 19.08.2026 passed by the learned Additional Sessions Judge, Bhatapara, District Balodabazar-Bhatapara in Criminal Revision No.03/2026 or with the order dated 13.01.2026 passed by the learned Judicial Magistrate First Class, Bhatapara.

20. Accordingly, the present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is **dismissed** at admission stage.

21. It is made clear that the observations made herein are confined only to the question of production of documents under Section 91 Cr.P.C. Nothing contained in this order shall be construed as an expression of opinion on the merits of the complaint under Section 138 of the Negotiable Instruments Act. The learned Trial Court shall decide the case strictly in accordance with law, on its own merit, on the basis of the evidence available before it, uninfluenced by any observation made in this order.

Sd/-

(Parth Prateem Sahu)

JUDGE

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