

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1064 OF 2024
IN
APPEAL NO. 901 OF 2008

Lalitkumar Pandit Choudhari ..Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Niranjan Mundargi, with Omkar Mulekar, for the Applicant.
Mrs. R.S. Tendulkar, APP, for the Respondent-State.

CORAM: N. J. JAMADAR, J.
DATE : 11th JUNE 2026

ORAL ORDER:

1. Heard the learned Counsel for the parties.
2. This is an Application seeking permission to lead additional evidence in Appeal, under the provisions of Section 391 of the Code of Criminal Procedure, 1973 ("The Code").
3. By a judgment and order dated 10th July 2008, the Applicant-Appellant has been convicted for the offences punishable under Section 7, 12 and 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 and sentenced to suffer Rigorous Imprisonment for a period of one year and pay fine of Rs.500 with default stipulation.

ARUN
RAMCHANDRA
SANKPAL

Digitally signed by
ARUN RAMCHANDRA
SANKPAL
Date: 2026.06.15
20:08:52 +0530

4. The instant Application is preferred on the premise that during the Departmental Enquiry proceeding, the Appellate Authority has recorded findings that the evidence and documents, submitted by Municipal Corporation of Greater Mumbai, regarding recovery of fine of Rs.1420/- as expenses incurred by the MCGM for confiscating the goods in the subject case were fake, fraudulent, false and fabricated. The Applicant, therefore, seeks permission to adduce Additional Evidence.

5. An Affidavit in Reply is filed opposing the prayers in the Application.

6. Mr. Niranjan Mundargi, the learned Counsel for the Applicant, submitted that in view of the subsequent development in the Departmental Enquiry, wherein the Appellate Authority has recorded clear findings that the evidence and documents tendered before the Special Court on behalf of MCGM were fake, false and fabricated, the Applicant deserves an opportunity to place the said material on record and examine the witnesses.

7. In opposition to this Mrs. R.S. Tendulkar, the learned APP, resisted the prayers in the Application. It was submitted that the evidence was recorded long back. The Applicant came to be convicted in the year 2008. At this stage, it would be extremely to difficult to secure the presence of the Investigating Officer and other witnesses. Even

otherwise, the Applicant does not deserve any opportunity to lead additional evidence.

8. Before advertng to the implications of the observations in the aforesaid report from the perspective of permitting the Appellant to adduce additional evidence, it may be appropriate to note the nature and extent of the power of the Appellate Court to admit the additional evidence under Section 391 of the Code.

9. Evidently, the Appellate Court has a wide discretion in the matter of admitting additional evidence. From the very phraseology of Section 391 of the Code, it becomes abundantly clear that the wide amplitude of the power to obtain additional evidence is emphasised by the use of the expression, “if it (Appellate Court) thinks additional evidence to be necessary”. The word, “necessary” need not be considered as an absolute necessity in the sense that the additional evidence must be necessary for deciding the Appeal. The word, “necessary” implies that the Court considers the additional evidence to be necessary for a just decision of the case. It is the command of justice which dictates the exercise of discretion.

10. A useful reference in this context can be made to a judgment of the Supreme Court in the case of **Rambhau And Anr Vs State of Maharashtra**,¹ wherein it was enunciated that, a very wide discretion is available in the matter of obtaining additional evidence in terms of

1 (2001) 4 SCC 759.

Section 391 of Code. A word of caution however, ought to be introduced for guidance, to wit: that this additional evidence cannot and ought not to be received in such a way so as to cause any prejudice to the accused. It is not a disguise for a retrial or to change the nature of the trial against the accused.

11. Following the aforesaid decision in the case of **Brigadier Sukhjeet Singh (Retired) MVC Vs State of Uttar Pradesh and Ors,**² the Supreme Court enunciated that, there are no fetters on the power of the Appellate Court under Section 391 of the Code. All powers are conferred on the Court to secure ends of justice. The ultimate object of judicial administration is to secure ends of justice.

12. I have perused the report dated 8th December 2020 under the caption “Report of the Hearing”. It appears that the said report pertains to the hearing of the Departmental Appeal preferred by the Applicant.

13. The Appellate Authority has recorded, *inter alia*, that in view of the material that has emerged, it was in the interest of justice to stay or cancel the punishment dated 14th August 2020 imposed upon the Applicant herein, till the final decision of the instant Appeal by this Court, as well as the final decision by the State Government on the Appeal preferred by the Applicant regarding, seniority, deemed dates of promotion other service benefits as per the Government directives.

2 (2019) 16 SCC 712.

14. First and foremost, it is necessary to note that the said report of hearing *prima facie* does not partakes the character of a final order passed by the Administrative Authority in the Departmental Appeal. The said report, *inter alia*, records a tentative view that the documents which were tendered before the Special Court on behalf of the MCGM were fake, false and fabricated. It appears that by recording the tentative views, the Appellate Authority considered it appropriate to stay the disciplinary proceeding against the Applicant. To what extent the said observations bear the determination of the guilt of the Applicant for the offences for which the Applicant has been convicted, appears debatable.

15. In the aforesaid view of the matter, at this stage, a case for grant of permission to lead additional evidence cannot be said to have been made out. It is, however, clarified that the effect of the observations in the report of hearing on the legality and correctness of the impugned judgment may be considered at an appropriate stage at the final hearing of the Appeal.

16. Thus keeping open the right of the Applicant to agitate the issue that in the Departmental Enquiry proceeding, the Appellate Authority has recorded a view that the evidence produced before the trial Court were fake, false and fabricated, the Application deserves to be dismissed.

17. The Application thus stands dismissed with liberty to the Applicant to agitate the implications of the observations in the report of hearing (Exhibit “B” to the Application), at the stage of final hearing of the Appeal.

[N. J. JAMADAR, J.]