



Crl.R.C.(MD).No.991 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.01.2026

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

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C.Sakthivel Subramanian

... Petitioner

Vs.

D.Sathishkumar

... Respondent

Prayer : Criminal Revision Petition filed under Section 438 and 442 of BNSS, 2023, to call for the records pertaining to the impugned docket order in Crl.M.P.No.3558 of 2025 in C.A.No.21 of 2025 dated 30.06.2025 passed by the Additional District Judge (Special Court under EC Act Cases), Thanjavur and set aside the same.

For Petitioner : Mr.P.Srinivasan

For Respondents : Mr.Mohammed Zammil
for M/s.Ajmal Associates

ORDER

The present Criminal Revision Case is filed challenging the order passed in Crl.M.P.No.3558 of 2025 in C.A.No.21 of 2025 dated 30.06.2025, whereby,



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petition filed under Section 432 of BNSS for remanding the case to the Trial Court to depose, adduce evidences through witnesses and mark documents for accused/appellant side and recall P.W.1 for cross-examination, was rejected.

2. Brief facts:

(i) The respondent preferred a complaint in S.T.C.No.181 of 2020 against the petitioner for the alleged offence under Section 138 of Negotiable Instruments Act. Revision petitioner was convicted without being afforded an opportunity to cross-examine P.W.1, bring evidence and mark documents on the defence side. Since the revision petitioner is under severe financial stress, the Advocates engaged were helping him on pro bono basis.

(ii) *Inter alia*, in order to rebut the presumption, a petition under Section 45 of Indian Evidence Act in Crl.M.P.No.2436 of 2023 was filed. The said petition was dismissed on 28.08.2023 and the order copy was made ready on 12.09.2023. However, before expiry of appeal period, Trial court convicted the petitioner vide judgment dated 15.09.2023 in violation of principles of natural justice and equity.

(iii) The revision petitioner would submit that he was not aware of law and procedure to be followed and he was also unaware that a petition under Section 145 of Negotiable Instruments Act ought to have been filed to cross



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examine P.W.1. He would further submit that due to matrimonial dispute, the revision petitioner suffered from mental trauma/agonny and was unable to produce relevant documentary evidence before the Trial Court.

(iv) In order to establish the truth, revision petitioner filed a petition under Section 432 of BNSS in Crl.M.P.No.3558 of 2025 to depose evidence, mark documents on the side of the defence and the same was rejected through docket order dated 30.06.2025 as follows:

"This petition to remand the case filed u/s.432 of B.N.S.S in order to reopen and recall the PW1 before the trial court or alternative permit the appellant to adduce evidence and mark documents before the trial court without showing any Bonafide reason or without annexing any documents in the petition is not maintainable. Hence this petition is rejected."

Aggrieved, petitioner preferred this revision case.

3. Learned counsel for petitioner would submit that aggrieved by the order of the Trial Court in S.T.C.No.181 of 2020, petitioner preferred an appeal in C.A.No.21 of 2025 before the Principal Sessions Court (Essential Commodities Act), Thanjavur. Along with appeal, petitioner annexed 24 documents, 16 of which, the petitioner claims that they were unable to produce before the Trial Court. He would submit that these documents, according to



petitioner, would prove that cheques were not issued voluntarily or of the petitioner's own volition, but were instead obtained under duress/coercion. He would further submit that the impugned order would show that the Special Court under Essential Commodities Act, Thanjavur had not even applied its mind to factors that are relevant while examining a petition filed under Section 432 of BNSS (corresponding to Section 391 of Cr.P.C) to take further evidence.

4. Learned counsel for respondent would submit that along with Cr.M.P.No.3558 of 2025, documents were not annexed once again.

5. Before proceeding further, it may be relevant to refer to Section 432 of BNSS, which reads as under:

“432. Appellate Court may take further evidence or direct it to be taken.—(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 advocate 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 XXV, as if it were an inquiry. ”

From a reading of the above provision, it appears to me that whenever an application is filed for adducing additional evidence, the same ought to be examined on the touchstone as to whether it is necessary or otherwise for ensuring that trial is fair and secure ends of justice. However, impugned order nowhere records any finding on the above aspect. The above enquiry being relevant and necessary while deciding a petition under Section 432 of BNSS, absence of any finding on the above aspect would lead me to believe that the entire exercise is vitiated.

6. It is trite that power to take additional evidence under Section 391 of Criminal Procedure Code (corresponding to Section 432 of BNSS) is intended to secure ends of justice. The scope and ambit of Section 391 of Cr.P.C has come up for consideration before the Supreme Court on more than one occasion. It may be relevant to refer to the judgment of the Supreme Court in the case of ***Sukhjeet Singh v. State of U.P.***, reported in ***(2019) 16 SCC 712***,



wherein, reliance was placed on the decision of the Supreme Court in the case of **Rajeswar Prasad Misra Vs. State of West Bengal** reported in **AIR 1965 SC 1887**, wherein, it was held as under:

"8. ... Since a wide discretion is conferred on appellate courts, the limits of that courts' jurisdiction must obviously be dictated by the exigency of the situation and fair play and good sense appear to be the only safe guides. There is, no doubt, some analogy between the power to order a retrial and the power to take additional evidence. The former is an extreme step appropriately taken if additional evidence will not suffice. Both actions subsume failure of justice as a condition precedent. There the resemblance ends and it is hardly proper to construe one section with the aid of observations made by this Court in the interpretation of the other section.

9. Additional evidence may be necessary for a variety of reasons which it is hardly necessary (even if was possible) to list here. We do not propose to do what the legislature has refrained from doing, namely, to control discretion of the appellate court to certain stated circumstances. It may, however, be said that additional evidence must be necessary not because it would be impossible to pronounce judgment but because there would be failure of justice without it. The power must be exercised sparingly and only in suitable cases. Once such action is justified, there is no restriction on the kind of evidence which may be received. It may be formal or substantial. It must, of course, not be received in such a way as to cause prejudice to the accused as for example it should not be



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received as a disguise for a retrial or to change the nature of the case against him. The order must not ordinarily be made if the prosecution has had a fair opportunity and has not availed of it unless the requirements of justice dictate otherwise."

7. In view thereof, impugned order passed by the Special Court under Essential Commodities Act, Thanjavur in Crl.M.P.No.3558 of 2025 in C.A.No.21 of 2025 dated 30.06.2025 is set aside and the matter is remanded back to the Special Court under Essential Commodities Act, Thanjavur for re-consideration in accordance with law.

8. Accordingly, this Criminal Revision Petition is disposed of.

09.01.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
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To
The Special Court under Essential Commodities Act,
Thanjavur.



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MOHAMMED SHAFFIQ, J.

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