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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 12th March, 2026**
+ CRL.M.C. 1796/2026 & CRL.M.A. 7398/2026 & CRL.M.A.
7399/2026
DIBYENDU BISWASPetitioner

Through: Mr. Manu Beri, Mr. Varun Varma,
Mr. Arjun Kumar Jha, Ms. Susmita
Singh and Mr. Raunek Raheja,
Advocates.

versus

GREEN AGREVOLUTION PVT LTDRespondent

Through: Ms. Akanksha Sisodia, Advocate
(through V.C.)

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner herein has been held guilty for commission of offence under Section 138 of *Negotiable Instruments Act, 1881* (NI Act) and *vide* order dated 18.08.2025, he has been sentenced to undergo Simple Imprisonment (SI) for a period of three months with direction to pay fine equivalent to Rs.24 lacs, which is to be paid to complainant as compensation.
2. Feeling aggrieved by the order of conviction and order on sentence, an appeal was preferred which was registered as Criminal Appeal No.346/2025.
3. While lodging such appeal, the appellant i.e. petitioner herein also filed an application under Section 391 of the *Code of Criminal Procedure, 1973* (Cr.P.C), (corresponding Section 432 BNSS) seeking permission to lead additional evidence with direction to respondent to produce his complete bank account statements for the relevant period, while asserting that these



documents were vital in nature and directly impacted the existence of '*legally enforceable debt*'.

4. His such application has been dismissed by the learned First Appellate Court *vide* order dated 17.02.2026.

5. Such order is under challenge.

6. The complaint in question was filed way back in the year 2022 and as per the complainant, the total outstanding against the accused was of Rs.19,85,692/-. According to the complainant, the accused i.e. petitioner herein, had even acknowledged the outstanding liability *vide* communications issued in the year 2021. In discharge of his liability, the concerned, allegedly, accused issued five cheques for total sum of Rs.20 lacs and when deposited, these cheques returned unpaid for "*funds insufficient*". Though, the legal notice issued by the complainant was duly responded, no payment was made by the accused and it was in the abovesaid backdrop, the complaint was filed.

7. As per the averments made in the application filed by the petitioner before the learned First Appellate Court whereby he wanted to lead additional evidence, it was contended that the complainant had deliberately withheld material documents such as *bank account statements* and according to him, even prior to the presentation of cheques in question, there was payment of Rs.1 lac to the complainant through *Paytm* and, thereafter also, a sum of Rs.35,000/- was paid through *Paytm* and these entries were never reflected in the ledger statement produced by the complainant before the learned Trial Court. Moreover, such ledger statement was not accompanied by mandatory certificate in terms of Section 65B of the *Indian Evidence Act, 1872*. Learned counsel for the petitioner places reliance upon *Harish v. Anita Gupta* (in CRLM.C. 2219/2025 and CRL.M.C. 2222/2025) passed by learned



Coordinate Bench of this Court *vide* judgment dated 04.08.2025 and submits that the primary object of Section 391 Cr.P.C. is to enable the Appellate Court to secure the ends of justice and to prevent miscarriage of justice and therefore, petitioner should not be punished for inadvertent lapse on the part of his counsel.

8. Fact, however, remains that these payments had been made by the petitioner himself and thus he was in the thick of things from day one. When the concerned authorized representative of the complainant entered into witness box on 23.11.2024, all such relevant questions could have been easily put to such witness. However, no endeavour was made in said direction.

9. When, after recording statement of accused under Section 313 Cr.P.C., there was an opportunity for the accused to lead his evidence, for totally inexplicable reasons, he did not enter into the witness box and did not highlight the alleged aspect of abovesaid two payments.

10. Evidently, the petitioner himself is responsible for his miseries, as despite being in the thick of things, he neither confronted the complainant with the abovesaid payment nor proved the same in affirmation by entering into witness box. The Appellate Court is not mandated to come to the aid and assistance of the petitioner for collecting defence evidence at his behest. Fact also remains that Section 391 Cr.P.C. would come into play only when any such applicant is able to show that such evidence, which he proposes to produce at a later stage, was not in his possession or was beyond his control, at the earlier stage. Nothing of that kind exists here. The alleged transaction of Rs.1,35,000/- is of the year 2022 and, therefore, these were well within the knowledge and possession of the petitioner and, there was nothing to prevent him from producing the abovesaid evidence during the pendency of the



complaint in question and, therefore, the endeavour of the petitioner is belatedly and purely on account of his own inaction. Reference in this context may be made to the judgment in *Ajitsin Chehuji Rathod v. State of Gujarat & Anr.* (2024) 4 SCC 453 wherein the Hon'ble Supreme Court has observed that power under Section 391 Cr.P.C. should be exercised only 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.

11. The bald averment that any litigant should not be made to suffer on account of the inaction on part of his counsel would not take the case of the applicant anywhere.

12. If according to the petitioner, the cheques were mere security cheques and could not have been presented, and if the ledger statement is inadmissible in evidence for want of mandatory certificate, such aspects can always be still highlighted by him at the time of arguments in the main appeal.

13. In view of the above, this Court does not find any reason to interfere with the impugned order.

14. However, the abovesaid observations are only in the context of the disposal of the present petition and would not prejudice the mind of the learned First Appellate Court, either way.

15. The petition is disposed of in aforesaid terms.

16. The pending applications also stand disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

MARCH 12, 2026/ss/sa