

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEALS NO.5150-5151 OF 2025

[@SPECIAL LEAVE PETITIONS (CRIMINAL) NO.11600-11601/2025]

SUNINDER SANDHA

...APPELLANT

VERSUS

STATE OF NCT OF DELHI & ANR.

...RESPONDENTS

R1: STATE OF NCT OF DELHI

R2: JEEVESH SABHARWAL

O R D E R

AHSANUDDIN AMANULLAH AND PRASHANT KUMAR MISHRA, JJ.

Heard learned senior counsel and counsel for the respective parties.

2. Leave granted.

3. The present appeals are directed against the common Impugned Final Judgment/Order dated 28.05.2025 [2025:DHC:4581] (hereinafter referred to as the 'Impugned Order') passed by a learned Single Judge of the High Court of Delhi at New Delhi (hereinafter referred to as the 'High Court') in Criminal M. C. Nos.9251/2024 and 9252/2024, whereby the High Court dismissed the petitions filed by the appellant and upheld the Order dated 23.10.2024 passed by the learned Metropolitan Magistrate (hereinafter referred to as the 'Trial Court') in Complaint Cases No.48771/2016 and 47692/2016 (*Suninder Sandha v Concept Horizon Infra Pvt. Ltd.*) directing the production of certain documents under Section 91 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code').

LEAD-UP TO THE INSTANT APPEALS:

4. The appellant in these appeals is the complainant in a complaint filed in 2016 under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act') alleging dishonour of a cheque for Rs.2,00,00,000/- (Rupees Two Crores) issued by respondent no.2.

5. In 2019, respondent no.2 moved an application under Section 210 of the Code before the Trial Court seeking amalgamation of the complaint with a First Information Report lodged by respondent no.2 against the appellant. Whilst the said application was pending, respondent no.2 chose to withdraw the same. Instead, respondent no.2 filed an application under Section 91 of the Code, seeking production of certain documents.

6. By Order dated 23.10.2024, the Trial Court directed the appellant to produce two documents, *viz.* (i) Income Tax Returns (including audited balance sheets and complete schedules) for the Financial Years 2009-2010 to 2016-2017, and; (ii) Bank Account Statements of the appellant.

7. Aggrieved, the parties i.e., appellant and respondent no.2 (*via* Criminal M. C. No.1081/2025) approached the High Court, which, *vide* the Impugned Order, upheld the directions issued by the Trial Court.

SUBMISSIONS:

8. Learned senior counsel for the appellant submitted that only dilatory tactics are being employed by respondent no.2, inasmuch as the matter relates to the year 2016, and from 2018 onwards, yet the proceedings have remained pending/in a state of dormancy till 2024. The application filed under Section 210 of the Code, it was submitted, was kept pending for years and ultimately withdrawn in 2024, only to be substituted by an application under Section 91 of the Code. It was asserted that which resulted in the Order passed by the Trial Court, which partly allowed the application under Section 91 of the Code, and subsequently upheld by the High Court. It was submitted that the law on the point now stands settled. Without reference to any earlier precedent, reliance was straightaway placed on **Sarla Gupta v Directorate of Enforcement, (2025) 7 SCC 626**, submitting that it has been clearly held that the stage for invoking Section 91 of the Code arises only when the accused produces/begins his defence evidence. It was contended that such stage having not yet arisen, the burden placed upon the appellant to produce the said two documents is wholly beyond jurisdiction.

9. It was further contended that respondent no.2 is trying to avoid his liability by referring to other proceedings initiated by him, which must be adjudicated independently on their own merits, without any interplay with the underlying complaint under the NI Act. It was argued that close to a decade has passed and the appellant has still not received his dues, despite the clear legal obligation/requirement on respondent no.2 to discharge the liability under the cheque in question. It was contended that the issuance and genuineness of the cheque are admitted and the plea that the cheque was issued under a misconception is wholly untenable, particularly when respondent no.2 is engaged in financial business. It was urged that respondent no.2, as such, cannot claim ignorance of the legal consequences that

follow under the NI Act. Prayer was made to allow these appeals and dismiss SLP (Crl.) Diary No.50132 of 2025.

10. Learned Additional Solicitor General for the respondent-NCT of Delhi submitted that he was in full support of the appellant's stand, for the simple reason that the law as settled in **Sarla Gupta (supra)** has clearly spelt out the stage at which the power under Section 91 of the Code may be resorted to. It was submitted that the relevant stage had not yet arisen in the Trial Court.

11. Mr. Adit S. Pujari, learned counsel for respondent no.2 in the present appeals and petitioner in SLP (Crl.) Diary No.50132/2025, submitted that the documents sought pertain to the accounts of the appellant-complainant and thus, he was in a position to produce the same before the Trial Court. It was submitted that such documents would reveal that there was a debt against the complainant which had to be discharged in favour of respondent no.2 in the present appeals, and such debt would far exceed the amount covered by the cheque. In such circumstances, stated learned counsel, it would be clear that the cheque amount of Rs.2,00,00,000/- (Rupees Two Crores) was not towards a legally enforceable debt as required under the NI Act. It was further contended that respondent no.2 would be precluded from raising this issue since he cannot himself produce such documents, and therefore there is no question of exhibiting them for the Trial Court to rely upon. Thus, according to him, his best defence would, for all practical purposes, be excluded from consideration.

12. At this juncture, it is clarified that in SLP (Crl.) Diary No.50132/2025, the challenge by the respondent no.2-petitioner is directed against that portion of the

Order of the Trial Court, as affirmed by the High Court, where certain additional documents, production of which was sought by the petitioner, were refused. Whereas, in the present set of appeals, respondent no.2 supports the Impugned Order inasmuch as it upholds the Trial Court's direction to produce the two documents as mentioned hereinbefore.

13. It was reiterated by learned counsel for respondent no.2 that the documents allowed to be produced and/or sought would establish that there existed a debt against the appellant, which, in fact, was due to respondent no.2-petitioner. Learned counsel, as such, prayed for dismissal of the appeals as also that SLP (Crl.) Diary No.50132/2025 be allowed.

DECISION:

14. Having examined the controversy, we are of the opinion that the Order of the Trial Court, as upheld by the High Court, warrants interference. We do not propose to delve into the factual details *in praesenti*, as the same is unnecessary for the present determination. Section 91 of the Code states:

'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 Bankers' 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 telegraph authority.'

(emphasis supplied)

15. Evidently, Section 91 of the Code does not itself prescribe any stage. The core issue remains whether invocation of power under Section 91 of the Code by the Trial Court is as per the manner contemplated/provided for in law. We are mindful that the underlying case in **Sarla Gupta** (*supra*)¹ concerned the Prevention of Money-Laundering Act, 2002. It is seen that **State of Orissa v Debendra Nath Padhi, (2005) 1 SCC 568**, relied upon by the High Court, was considered by a Bench of equal strength in **Sarla Gupta** (*supra*). On **Debendra Nath Padhi** (*supra*), the Court commented in **Sarla Gupta** (*supra*) as under:

'44. Thus, this Court observed that the entitlement of the accused to seek an order under Section 91CrPC for the production of the documents that are not relied upon would ordinarily not come till the stage of defence. These observations are in the context of what constitutes "the record of the case" for the purposes of Section 227CrPC. Even this judgment recognises the right of the accused to seek documents at the time of leading defence evidence by invoking Section 91CrPC. We may note here that what is observed by this Court is that there is no absolute prohibition on an accused making an application under Section 91CrPC, before the stage of entering upon defence. It is held that ordinarily, the entitlement of the accused to apply under Section 91 will not arise till the stage of defence.'

(emphasis supplied)

16. An earlier case, namely **Om Prakash Sharma v CBI, Delhi, (2000) 5 SCC 679** was also taken note of in **Sarla Gupta** (*supra*) as below:

'48. ...
Thus, this decision will have no application when it comes to the right of the accused to apply for the production of documents by invoking Section 91CrPC at the stage of entering defence. The decision means that the said right is ordinarily not available at the time of framing of the charge. The reason is that while framing a charge, the court can consider only that material which forms part of the charge-sheet.'

(emphasis supplied)

¹ Where the coram included one of us (Amanullah, J.).

17. The law is no longer *res integra*, having been lastly settled by the 3-Judge Bench in ***Sarla Gupta*** (*supra*), which provides clarity as to the relevant stage at which power under Section 91 of the Code may be invoked. In the underlying case in these appeals, such stage has not yet been reached, as defence evidence has not commenced. For clarity, the relevant extracts from ***Sarla Gupta*** (*supra*) read as below:

'68. Hence, some of our important conclusions are as under:

xxx

68.3. We hold that a copy of the list of statements, documents, material objects and exhibits that are not relied upon by the investigating officer must also be furnished to the accused. As held by this Court, the object is to ensure that the accused has knowledge of the documents, objects, etc. in the custody of the investigating officer which are not relied upon so that at the appropriate stage, the accused can apply by invoking the provisions of Section 91CrPC (Section 94 BNS) for providing copies of the documents which are not relied upon by the prosecution.

xxx

68.5. At the stage of entering upon defence, an accused can apply for the issue of process for the production of any document or thing in accordance with Section 233(3)CrPC [Section 256(3) BNS]. At this stage, he can also apply for the production of a document or a thing that is in the custody of the prosecution but has not been produced. A fair trial is a part of the right guaranteed to an accused under Article 21 of the Constitution. The right to a fair trial of the accused includes the right to defend. The right to defend consists of the right to lead the defence evidence by examining the witnesses and producing the documents. Therefore, the accused is entitled to exercise his right at the stage of entering upon defence by compelling the prosecution or a third party to produce a document or a thing in their possession or custody. The court can decline the request of the accused for issuing process for the production of documents only on the limited grounds set out in sub-section (3) of Section 233CrPC.

xxx'

(emphasis supplied)

18. Thus, on the afore-referenced short point alone, having regard to the precedents afore-cited, we are inclined to allow Criminal Appeals Nos.5150-5151/2025 and set aside the Impugned Order dated 28.05.2025 passed by the High Court in Crl. M. C. Nos.9251/2024 and 9252/2024. Ordered accordingly.

19. The instant Order, be it noted, only concerns the stage of invocation of the power under Section 91 of the Code. We have not commented upon, much less dealt with, the merits of the underlying matter, which is left open to be decided by the Trial Court in accordance with law. That said, respondent no.2 is not precluded from applying for resort to Section 91 of the Code, albeit at the appropriate stage before the Trial Court.

20. As the NI Act complaint is of the year 2016, the Trial Court is directed to ensure that the matter reaches its logical conclusion within a period of one year from today. To this end, a copy of the present Order be sent to the Trial Court by the Registry through the Registrar-General, Delhi High Court.

21. Pending application shall stand closed.

.....J.
[AHSANUDDIN AMANULLAH]

.....J.
[PRASHANT KUMAR MISHRA]

NEW DELHI
02nd DECEMBER, 2025

ITEM NO.20

COURT NO.13

SECTION II-D

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEALS NO.5150-5151 OF 2025

[@Petitions for Special Leave to Appeal (Crl.) No.11600-11601/2025]

[Arising out of the Impugned Final Judgment/Order dated 28-05-2025 in CRLMC No.9251/2024 and CRLMC No.9252/2024 by a learned Single Judge of the Delhi High Court]

SUNINDER SANDHA

PETITIONER

VERSUS

STATE OF NCT OF DELHI & ANR.

RESPONDENTS

[TO BE TAKEN UP HIGH ON THE BOARD]

IA No.185844/2025 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

WITH

Diary No.50132/2025 (II-D)

[FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 292783/2025; FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 292784/2025; FOR EXEMPTION FROM FILING O.T. ON IA 292786/2025; FOR CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS ON IA 292792/2025; IA No.292792/2025 - CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS; IA No.292784/2025 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT; IA No.292786/2025 - EXEMPTION FROM FILING O.T.; IA No.292783/2025 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES]

DATE : 02-12-2025 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Mr. Ranjeet Kumar, Sr. Adv.
Mr. Abhimanyu Bhandari, Adv.
Mr. Adit S Pujari, Adv.
Mr. Bhavesh Seth, Adv.
Ms. Prerna Mukherjee, Adv.
Mr. Akash Dikshit, Adv.
Mr. Bhaskar Aditya, AOR
Mr. Pavitra Dixit, Adv.

Mr. Siddharth Agarwal, Sr. Adv.
Mr. Asim Naeem, Adv.
Mr. Maneesh Saxena, Adv.
Mr. Vishant Prakash, Adv.
Ms. Cherry Gupta, Adv.
Mr. Rajan Narain, AOR

For Respondent(s) **Mr. Rajkumar Bhaskar Thakare, (Sr. Adv.) ASG**
Mr. Prasanjeet Mohapatra, Adv.
Mr. Sanjay Kumar Tyagi, Adv.
Ms. Neelakshi Bhaduria, Adv.
Mr. Rishikesh Haridas, Adv.
Mr. Ishaan Sharma, Adv.
Mr. Mukesh Kumar Maroria, AOR

Mr. Bhaskar Aditya, AOR

Mr. Adit S Pujari, AOR

UPON hearing learned Counsel, the Court made the following
O R D E R

CRIMINAL APPEALS NO.5150-5151/2025

[@SPECIAL LEAVE PETITIONS (CRIMINAL) NO.11600-11601/2025]

Leave granted in Special Leave Petitions (Criminal) No.11600-11601/2025.

2. Criminal Appeals No.5150-5151/2025 [arising from Special Leave Petitions (Criminal) No.11600-11601/2025] are allowed in terms of the Signed Order.

3. Pending application stands closed.

SPECIAL LEAVE PETITION (CRIMINAL) Diary No.50132/2025

4. Delay condoned in filing SLP (Criminal) Diary No.50132/2025.

5. In view of the Signed Order in Criminal Appeals No.5150-5151/2025 including the reasons assigned therein, SLP (Criminal) Diary No.50132/2025 (Criminal) stands dismissed.

6. Pending applications stand closed.

[VARSHA MENDIRATTA]

[ANJALI PANWAR]

COURT MASTER (SH)

ASSISTANT REGISTRAR

[Signed Order is placed on the file.]