



Judgment

revn58.18

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL REVISION APPLICATION NO.58 OF 2018

Kuwarlal s/o Hiralal Wasnik,
aged about 48 years, occupation: professor,
r/o Radhika Apartment,
Ganediwala Layout, Camp,
Amravati, taluka and district Amravati. **Applicant.**

:: VERSUS ::

1. ~~Sau. Alka Kuwarlal Wasnik (Dead)~~,
aged about 40 years,
occupation: Ad hoc Professor,
R/o VMV Girls Hostel,
VMV Compound, Amravati,
taluka and district Amravati,
(P.S.Gadgenagar, Amravati).

2. Sapna Madhukarrao Ramteke,
aged 35 years, occupation: LIC Agent,
r/o Madhav Vihar, Tapovan,
Amravati, district Amravati.

3. State of Maharashtra,
through Police Station Officer,
Police Station, Gadgenagar,
Amravati.
Tahsil and district Amravati. **Non-applicants.**

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Shri M.P.Kariya, Counsel for the Applicant.
Shri Raheel Mirza, Counsel for NA No.1.
Shri A.M.Kadukar, APP for NA No.3/State.

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CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 23/01/2026

PRONOUNCED ON : 09/02/2026

JUDGMENT

1. Heard learned counsel Shri M.P.Kariya for the applicant, learned counsel Shri Raheel Mirza for the non-applicant No.1, and learned APP Shri A.M.Kadukar for the State. **Admit.** Heard finally by consent.

2. This revision is preferred by the applicant challenging order passed by learned Additional Sessions Judge, Amravati allowing application of non-applicant No.1 under Section 391 of the Code of Criminal Procedure in Criminal Appeal No.100/2012 dated 11.1.2016.

3. Brief facts of the case are as under:

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The non-applicant No.1 lodged a report with the concerned police station alleging that she is legally wedded wife of the applicant. After the marriage, she was ill-treated by the applicant and other family members and, therefore, she lodged the report. On the basis of the said report, the police have registered the crime against the applicant and other family members. After completion of investigation, chargesheet is filed against the applicant. However, learned Magistrate acquitted him of charges. Therefore, she preferred an appeal bearing Criminal Appeal No.100/2012 challenging the judgment and order of acquittal before learned Additional Sessions Judge, Amravati. During the pendency of the appeal, she filed an application below Exh.57 under Section 391 of the Code seeking permission to adduce additional evidence. Learned Additional Sessions Judge, after considering the application and

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reply filed and on hearing both the sides, allowed the application and directed learned Magistrate to record additional evidence on the point of proving of birth certificate of child between Sapna Kuwarlal Wasnik and Kuwarlal Hiralal Wasnik born on 26.3.2014 at the hospital of Dr.Panjal Sharma at Amravati and to further record evidence whether said Sapna and Kuwarlal Hiralal Wasnik are one and the same and give finding afresh whether the offence of bigamy is proved or not so also whether there was mental cruelty due to so-called extra marital relation of the applicant with said Sapna Kuwarlal Hiralal Wasnik.

4. Being aggrieved and dissatisfied with the same, the present revision is filed by the applicant on the ground that learned Additional Sessions Judge has not considered that earlier application for adducing additional evidence is already rejected by the court by

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order dated 27.7.2015. The said order was challenged before this Court also in Criminal Writ Petition No.735/2015 and the same was maintained. Despite there was a finding by this court, while rejecting the application that no such additional evidence is required for a just decision of the case, again with the same ground, the application was filed and learned Additional Sessions Judge has allowed the application.

5. Learned counsel for the applicant invited my attention towards provisions of Section 391 of the Code and submitted that the parties are not entitled to use the said provisions as the wording used in the said Section itself shows that it is to the court if feels that in the interests of justice, additional evidence is required. In view of the said Section, either the appellate court can record the evidence or remand it to the trial court for recording evidence. Learned Additional Sessions Judge

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has completely ignored the legal provisions and not only remanded the matter for recording the evidence but also for recording the finding. He submitted that considering the scope of Section 391 of the Code, the revision deserves to be allowed by setting aside the order passed by learned Additional Sessions Judge, Amravati.

6. *Per contra*, learned APP for the State strongly opposed the said contentions and submitted that for a just decision of the case, the said evidence was required as the present applicant is prosecuted for the offences under Section Section of the IPC. The documents pertain to the birth of child begotten from illicit relationship of the applicant and one Sapna. To establish the offence under Section 494 of the IPC, the said birth certificate and the evidence regarding the said birth certificate is essential and, therefore, there is no illegality committed

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by learned Additional Sessions Judge and in view of that the revision being devoid of merits is liable to be rejected.

7. After hearing both the sides and after considering the record, there is no dispute as to the relationship between the applicant and the non-applicant No.1, who subsequently, reported to be dead. The matrimonial relationship between the applicant and the deceased is undisputed. It is also undisputed that the applicant was prosecuted for the offences under Section 498A, 494, 506(2) and 201 of the IPC. After completion of the investigation, chargesheet was submitted. During a full-fledged trial, learned Magistrate has held that the prosecution could not prove the charges against the applicant. Being aggrieved and dissatisfied with the same Criminal Appeal No.100/2012 was preferred by the original complainant. During pendency of that appeal, the application was filed below Exh.50 seeking

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permission to adduce additional evidence. The same was rejected by order dated 27.7.2015. The said order of learned Additional Sessions Judge rejecting the application was challenged before this court in criminal Writ Petition No.735/2015. This court on perusal of the impugned order held that the petitioner has not appeared before the appellate court and was avoiding hearing of the appeal. When the matter was fixed for judgment, an application came to be filed by the petitioner seeking permission to file documents and adduce further evidence in the matter. The application is totally silent and does not show any reason for adducing additional evidence and, therefore, declined to interfere in the said order.

8. Subsequent to disposal of the writ petition, again application came to be filed below Exh.57 contending a detailed reason that there was illicit relations between

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the applicant and one child is begotten from the said wedlock. To prove the offence under Section 494 of the IPC, the evidence as to birth of the child due to the relationship between the applicant and one Sapna, the said evidence is required. Learned Additional Sessions Judge allowed the said application and hence, this revision.

9. Section 391 of the Code deals with appellate powers to receive additional evidence. The said Section forms an exception to the general rule that an appeal must be decided on the evidence which was before the trial court and powers being exceptional shall always have to be exercised with caution and circumspection so as to meet the ends of justice.

10. It is to be noted further that the doctrine of finality of judicial proceedings does not stand annulled or

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affected in any way by reason of exercise of power under Section 391 of the Code. It is not to fill up the lacuna but to sub-serve the ends of justice. Section 391 of the Code is thus akin to Order 41, Rule 27 of the Civil Procedure Code. Power to record additional evidence under Section 391 of the Code should only be exercised 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. The proposition taking additional evidence in a criminal appeal cannot be adopted as a matter of course by the appellate court and in fact, the occasion for the appellate court to take a considered decision on the prayer for adducing additional evidence in appeal could arrive only after the appeal itself has been heard on merits and not

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before. The key words in Section 391(1) of the Code are "if it thinks additional evidence to be necessary". The word "necessary" used in Section 391(1) is to mean necessary for deciding the appeal. The powers of appellate court are contained in Section 386 of the Code. Power to take additional evidence under Section 391 is, thus, with an object to appropriately decide the appeal by the appellate court to secure ends of justice.

11. The appellate court's powers to receive additional evidence under Section 391 of the Code are powers being in the nature of an exception shall always have to be exercised with caution and circumspection so as to meet the ends of justice. Though under provisions of the said Section a wide discretion has been conferred, the powers could not be exercised for filling up any lacunae and the appellate court while directing taking of additional evidence was required to record reasons for the same.

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The powers were held to be in the nature of exception to the general rule and it was stated that the same must be exercised with great care. It is, therefore, seen that the powers under Section 391 of the Code to take additional evidence by the appellate court are of a discretionary nature and are to be exercised sparingly and only in suitable cases. In view thereof, additional evidence cannot be tendered at the appellate stage as a matter of right and the power to be exercised by the appellate court is to be based on discretion, sound judicial principles and in the interest of justice. The discretion is to be exercised in suitable cases.

12. The said aspect is considered by the Hon'ble Apex Court in the case of **Ajitsinh Chehuji Rathod vs. State of Gujarat and ors, reported in AIR 2024 SC 787** wherein it is held that, "the law is well-settled by a catena of judgments rendered by this Court that power to record

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additional evidence under Section 391 CrPC should only be exercised 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”.

13. In the case of **Zahira Habibullah Sheikh v. State of Gujarat, reported in (2004) 4 SCC 158**, the Hon’ble Apex Court has elaborately dealt with aspect of exercising jurisdiction, highlighting balance which the courts have to maintain so as to not deny right to additional evidence to do justice and importance of right to fair hearing of the accused as well as the prosecution. The right to fair hearing is inherent to the concept of due process of law and ascertainment of truth. Equally, there can be failure of justice if this discretion to allow additional evidence at

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the appellate stage is exercised in a routine and liberal manner without the court being satisfied that prayer bears imprints of reasonableness and genuineness to at least consider the worth, credibility, and acceptability of material sought to be brought on record.

14. In the light of the above well settled principles and legal provision, it reveals that Chapter-29 of the Code deals with “appeal”. Section 391 of the Code empowers the appellate court to take further evidence or direct it to be taken. Section 391 is reproduced as follows:

“391. 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.

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(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 pleader 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 XXIII, as if it were an inquiry”.

15. In view of Section 391(1), when additional evidence is taken, the appellate court 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.

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In view of sub section (2), when the additional evidence is taken by the Court of Sessions 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.

16. Thus, in view of the above provisions, the matter is to be remanded back to the extent of recording the evidence to the trial court and not for recording the findings.

17. The power to take additional evidence under Section 391 is thus with an object to appropriately decide the appeal by the appellate court to secure the ends of justice.

18. The scope and ambit of Section 391 of the Code has come up for consideration before the Hon'ble Apex Court in the case **Rajeswar Prasad Misra vs. State of West**

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Bengal and anr, reported in MANU/SC/0080/1965 wherein it is held that, “a wide discretion is conferred on the appellate court and additional evidence may be necessary for variety of reasons”.

It is further held 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 and following principles are laid down in paragraph Nos.8 and 9, 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

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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 proper to construe one section with the aid of observations made 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

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in such a way as to cause prejudice to the accused as for example it should not be 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

19. Thus, from the law laid down by the Hon'ble Apex Court as noted above, it is clear that there are no fetters on the power under Section 391 of the Code of the appellate court. All powers are conferred on the Court to secure ends of justice. The ultimate object of judicial administration is to secure ends of justice. Court exists for rendering justice to the people.

20. In view of the above observations, if the order passed by learned Additional Sessions Judge is taken into consideration, admittedly, he has taken into consideration

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that initially that evidence was not available with the original complainant and subsequently she came to know about the fact of the birth of the child between her husband and one lady and, thereafter, she approached the court during the pendency of the appeal. Therefore, the order passed by learned Additional Sessions Judge as to remanding the matter to the extent of recording additional evidence on the point of proving birth certificate of birth of child between Sapna Kuwarlal Wasnik and Kuwarlal Hiralal Washim on 26.3.2014 at the hospital of Dr.Panjal Sharma is legal and correct.

21. As far as further directions to give finding is concerned, it is beyond the scope of Section 391 of the Code.

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22. In this view of the matter, the present revision deserves to be allowed partly. Hence, I proceed to pass following order:

ORDER

(1) The Criminal Revision Application is **Partly Allowed**.

(2) The order passed by learned Additional Sessions Judge, Amravati in Criminal Appeal No.100/2012 dated 11.1.2016 is hereby modified to the extent that the original complainant is permitted to adduce additional evidence.

(3) Learned Magistrate shall record additional evidence on the point of proving of birth certificate of birth of child begotten by Sapna Kuwarlal Wasnik born on 26.3.2014 out of relationship with Kuwarlal Hiralal Wasnik and learned Magistrate shall certify such evidence and

forward it to the appellate court i.e. Additional Sessions Judge.

(4) The further direction given by learned Sessions Judge that learned Magistrate shall give finding afresh whether there was bigamy between the applicant and the non-applicant No.2 and so also whether there was mental cruelty due to so called extra marital relationship is quashed and set aside.

Revision stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!