

I.A. No.13 of 2018  
 IN  
 CrI. Revision Petition No.08 of 2015  
 Radhey Shyam Swami v. Jagat Singh Singhi

**THE HIGH COURT OF SIKKIM: GANGTOK**  
**(Criminal Revisional Jurisdiction)**

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 S.B.: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE  
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**I.A. No.13 of 2018**  
**IN**  
**CrI. Rev. P. No. 08 of 2015**

Shri Radhey Shyam Swami,  
 S/o Late Likhma Ram Swami,  
 C/o Apsara Saree Centre, Sitla Bazar,  
 Sadalpur, Churu, Rajasthan.

.... Revisionist

**versus**

Shri Jagat Singh Singhi,  
 S/o Late Manmull Singhi,  
 R/o Tibet Road,  
 Gangtok,  
 East Sikkim.

.... Respondent

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**Application under Section 391 read with Section 482 of the**  
**Code of Criminal Procedure, 1973.**

**Appearance:**

Mr. Zangpo Sherpa, Mr. Sangay G. Bhutia and Mr. Jushan Lepcha, Advocates for the Revisionist.

Mr. Jorgay Namka, Ms. Panila Theengh, Ms. Tashi Doma Sherpa, Advocates for the Respondent.

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**ORDER ORALLY**

(06.08.2018)

**Bhaskar Raj Pradhan, J**

1. This is an application filed on behalf of the Respondent for taking further evidence under Section 391 of the Code of Criminal

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Procedure, 1973 (Cr.P.C.) The Respondent was the complainant before the Trial Court against the Revisionist in the present proceedings. The Trial Court having examined the case rendered its judgment coming to the conclusion that in view of the clear, cogent and consistent evidence adduced by the complainant as well as the documentary evidence and sufficiently proved before this Court the Respondent has been able to prove his case against the Revisionist under Section 138 of the Negotiable Instrument Act, 1881 (N.I. Act). The Revisionist preferred an Appeal before the Court of the Sessions Judge in Criminal Appeal No.05 of 2013. The Learned Sessions Judge vide judgment dated 27.06.2015 would come to the conclusion that the judgment and order on sentence dated 24.06.2008 and 25.06.2008 respectively passed by the Learned Trial Court was required to be affirmed. The Revisionist was dissatisfied with even the Appellate Court's judgment and has preferred the present Revision Petition.

- 2.** Section 138 of the N.I. Act, 1881 mandates the complainant to prove any debt or other liability as one of the ingredients.
- 3.** The application under consideration seeks leave to lead further evidence with regard to certain documentary evidence filed therewith. A Special Power of Attorney purportedly signed by one Amar Singh Singhi on 28.02.1997 at Mangan, North Sikkim purportedly in favour of the Revisionist has been placed before this Court by which it is said that the Revisionist was given a

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Special Power of Attorney to negotiate on terms for and to agree to and enter into and conclude any agreement or sale and sell the said Amar Singh Singhi's landed property fully mentioned and described in the scheduled thereto and further to receive from the intended purchaser or purchasers any earnest money and /or advance and also the balance of purchase money, and to give good, valid receipt and discharge for the same and for various other purposes as detailed therein.

4. The Respondent has also filed and sought to rely upon a certified true copy from the office of the Sub-Registrar, North Sikkim, at Mangan of a page of the register maintained for the month of October, 1996 and closing on 31 march, 1997 which records the registration of the Power of Attorney granted by the said Amar Singh Singhi to the Revisionist. The next document sought to be relied upon by the Respondent is a notarised and attested copy of a vernacular document from the State of Rajasthan which purports to be a sale deed entered between the Respondent as well as the said Amar Singh Singhi as the seller and Sant Kumar and Narendra Kumar as the buyer clearly mentioning therein that the sale deed is being executed by the Special Power of Attorney holder Radhey Shyam who is the Revisionist in the present case. The sale deed *prima-facie* reflects that it pertains to the same lands to which the present dispute relates. The sale deed is dated 03.11.1998. The next two documents sought to be relied upon are the land records

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(jamabandi) of the District Churu. The purported land records have been filed by the Respondent to reflect that Khasra No. 205 had been transferred to various persons mentioned therein between the periods 04.10.2001 to 26.01.2002. Both the land records filed are certified copies obtained from the state of Rajasthan. The Respondent in the application has categorically averred that the Respondent was made to believe and advised that as far as the procedural aspect of cases under the N.I. Act, 1881 was concerned he only had to prove that the cheque in question was executed and issued by the accused on an account maintained by him with a banker for payment of any amount of money to the Respondent for the discharge in whole or in part or of any debt or other liability. It is further averred that the Respondent as advised recently is in the process of obtaining relevant documents from Rajasthan and Mangan, North Sikkim out of which he has been able to obtain the aforementioned documents.

**5.** *Prima-facie* it is quite evident that the document obtained by the Respondent recently and sought to be relied upon has direct bearing to the present case. In the circumstances this Court is of the view that the additional evidence sought to be produced is necessary and further that not examining the said documents may occasion a failure of justice.

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**6.** In the circumstances, it is directed that the records of the present case be remitted to the Court of Judicial Magistrate, First Class, East Sikkim at Gangtok to take the additional evidence relating to the documents filed by the Respondent in I.A. No.13/2018 in Criminal Revision Petition No.08/2015 giving opportunity to the Revisionist to rebut the same as per law. After recording such evidence the Learned Judicial Magistrate shall forward the records back to this Court.

**7.** This matter has been pending before this Court from the year 2015. In such circumstances the Learned Judicial Magistrate, First Class, East Sikkim is requested to complete the process of taking additional evidence as soon as possible and forward the records forthwith to enable this Court to examine the merits of the Criminal Revision Petition No.8/2015 at the earliest.

**Judge**  
**06.08.2018**