APHC010429322026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI

TUESDAY, THE 13th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

CRIMINAL PETITION NO: 7085 OF 2026

Between:

1. Aswa Satyanarayana, S/o Late Savaranna, aged 49 years, Chief Office Superintendent, O/o Senior Section Engineer, P. Way, Nandyal Plains, Kurnool District, Present R/o H.No.28/1027-17, Navmannagar, Nandyal - 518502.Permanent R/o H.Np.87-1096-3-4, IV Class Employees Kurnool.

...Petitioner

AND

1. The State of Andhra Pradesh, represented by its Spl. Public Prosecutor, CBI, High Court of Andhra Pradesh, Amaravati, Guntur District.

2. Union of India, Rep. by its Secretary, Ministry of Home Affairs, North Block, New Delhi-110001.

...Respondents

Petition under Section 437/438/439/482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court to call for the records pertaining to the Order dated 21.07.2026 in CrI.M.P.No.390 of 2026 in CC No. 10 of 2022 on the file of

the Special Judge for Trial of CBI Cases, Kurnool and quash the same by allowing the CrI.M.P.No.390 of 2026 as prayed for in the interest of justice.

IA NO: 1 OF 2026

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay all further proceedings in CC No. 10 of 2022 on the file of the Special Judge for Trial of CBI Cases, Kurnool, including the appearance of the Petitioner/Accused, pending disposal of the above Criminal Petition in the interest of justice.

Counsel for the Petitioner: G RAMA GOPAL

Counsel for the Respondents: P S P SURESH KUMAR, Spl. Public Prosecutor for CBI

APHC010433242026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI

TUESDAY, THE 13th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

CRIMINAL PETITION NO: 7176 OF 2026

Between:

1. Aswa Satyanarayana, S/o Late Savaranna, aged 49 years. Chief Office Superintendent, O/o Senior Section Engineer, P. Way, Nandyal Plains, Kurnool District, Present R/o HNo.28/1027-17, Navmannagar, Nandyal 518502.Permanent R/p H.No.87-1096-3-4 IV Class Employees kurnool-518002

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AND

1. The State of Andhra Pradesh, represented by its Spl. Public Prosecutor,CBI, High Court of Andhra Pradesh, Amravati, Guntur District.

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Petition under Section 437/438/439/482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court pleased to call for the records pertaining to the Order dated 21.07.2026 in CrI.M.P.No.390 of 2026 in CC No.10 of 2022 on the

file of the Special Judge for Trial of CBI Cases, Kurnool and quash the same by allowing the CrI.M.P.No.390 of 2026 as prayed for in the interest of justice

IA NO: 1 OF 2026

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to stay all further proceedings in CC No. 10 of 2022 on the file of the Special Judge for Trial of CBI Cases, Kurnool including the appearance of the Petitioner/Accused, pending disposal of the above Criminal Petition in the interest of justice.

Counsel for the Petitioner: G RAMA GOPAL

Counsel for the Respondents: P S P SURESH KUMAR, Spl. Public Prosecutor for CBI

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

CRIMINAL PETITION Nos: 7085 and 7176 of 2026

COMMON ORDER:

Criminal Petition No.7085 of 2026 under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed on behalf of the petitioner herein (Accused), seeking to quash the Orders dated 21.07.2026 and 21.07.2026 in Crl.M.P.No.389 in CC No.10 of 2022 on the file of the Special Judge for Trial of CBI Cases, Kurnool, whereunder application filed under Sections 91 to summon six sets of fresh mutual transfer application was dismissed.

2. Whereas, Criminal Petition No.7176 of 2026 under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 has been filed by the very same petitioner herein (Accused), also seeking to quash the consequential Orders dated 21.07.2026 in Crl.M.P.No.390 of 2026 in CC No.10 of 2022 on the file of the Special Judge for Trial of CBI Cases, Kurnool, whereunder application filed under Section 311 Cr.P.C to recall PW13 was dismissed.

3. Sri G.Rama Gopal, learned counsel, who is appearing for petitioner in both the cases, and Sri P.S.P.Suresh Kumar, learned Special Public Prosecutor for Respondent-CBI advanced their common arguments in both cases, and this Court has consciously gone through the entire material available on record.

4. Petitioner is accused in CC No.10 of 2022 on the file of the Special Judge for Trial of CBI Cases, Kurnool and is facing charges for the offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption

Act, 1988. During the course of examination, prosecution examined its witnesses, including PW.13 and marked Ex.P24. Ex.P24 is a Department Communication dated 12.07.2016 from the office of Senior Section Engineer of the Permanent Way (P.Way) Department stationed at Nandyal, wherein enclosures of "six sets of mutual transfer applications" were annexed. Thereafter, the petitioner filed Crl.M.P.Nos.389 and 390 of 2026 in CC No.10 of 2022 on the file of the Special Judge for Trial of CBI Cases, Kurnool under Sections 91 & 311 Cr.P.C., to summon six sets of fresh mutual transfer applications said to have been enclosed to Ex.P24 and to recall PW.13, which were vehemently resisted by respondent-prosecution. At last, trial Court dismissed the said petitions *vide* Orders dated 21.07.2026 and 21.07.2026. Challenging same, instant Criminal Petitions were preferred before this Court.

Counsel for the petitioner's submissions:

5. Sri G.Rama Gopal, learned counsel for the petitioner states that the prosecution examined PW.13 and marked Ex.P24, which was annexed with six sets of mutual transfer applications. He states that in order to put effective defence and to unravel the truth, enclosures of Ex.P24 are just and essential. Learned counsel also states that trial Court mainly dismissed the said petition on the ground that the said enclosures were forwarded subsequent to the alleged trap and they have no bearing to determine the core issue in the *lis*. He states that the finding of the trial Court that the petition does not contain satisfactory reason is not valid and at last, he contends that petitioner, being accused, has a vested right to defend his case effectively, and also perception

of prejudice likely to cause to be viewed compulsorily, which is part and parcel of a fair trial. Learned counsel for the petitioner also stated that impugned petitions under Sections 91 and 311 Cr.P.C., are only before the defence evidence. Hence, accused is at liberty to file these petitions at the stage of defence evidence also. He also draw attention of this Court parameters and judicial scrutiny would be different and distinct in both stages. As such, instant petitions are liable to be allowed.

Counsel for respondent submissions:

6. Sri P.S.P.Suresh Kumar, learned Special Public Prosecutor for Respondent-CBI, states that apparently, Ex.P24 is annexed with six sets of mutual transfer applications and those documents are relevant and apt for determination of the criminal case before the trial Court. He also states that the documents that are sought by the petitioner are not at all relied upon by the prosecution. He further contends that the petitioner filed the impugned petition before the trial Court only to protract the litigation. He fairly submits that filing a petition under Section 91 Cr.P.C. and its consequential application under Section 311 Cr.P.C., at that juncture i.e., before the defence examination, is not at all warranted. Substantiating his assertions, learned Special Public Prosecutor relied upon the dictum of the Hon'ble Apex Court in ***Suninder Sandha Vs. State of NCT of Delhi and Another***[1].

[1] 2025 SCC OnLine SC 3246

Analysis:

7. Considering the facts and circumstances involved in the *lis*, this Court has cautiously gone through the material available on record. Indisputably, the petitioner is accused in CC No.10 of 2022 on the file of Special Judge for Trial of CBI Cases, Kurnool and is facing charges for the offences punishable under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, which are penal provisions and it is also undisputed that the prosecution examined PW.13 and marked Ex.P24 dated 12.07.2016, which was annexed with six sets of mutual transfer applications.

8. On one hand, learned counsel for the petitioner/accused submits that said enclosures of Ex.P24 are just and essential to defend his case and on the other hand, learned Special Public Prosecutor submits that the prosecution is not at all relying on the said enclosures at all. At that juncture, it is appropriate to note the statutory regime of Section 91 Cr.P.C.:

> ***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 Banker's 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 telegram authority.

9. A plain reading of Section 91 Cr.P.C., corresponding to Section 94 of the BNSS, enables the Court or the police to call for any document or other thing which is necessary or useful for an investigation, inquiry or trial. The purpose of this provision is to bring relevant material before the Court so that the case can be properly decided. However, this power is not unlimited and must be used only when the document or thing is necessary or desirable for the proceedings. It cannot ordinarily be used to compel an accused to produce documents in a way that may amount to forcing him to give evidence against himself.

10. It is equally apt to mention Section 311 Cr.P.C., corresponding to Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023:

311. Power to summon material witness or examine person present: *Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.*

[311-A. Power of Magistrate to order person to give specimen signatures or handwriting. [Inserted by Act of 2005, Section 27 (w.e.f. 23-6-2006).]- If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the

time and place specified in such order and shall give his specimen signatures or handwriting:"

11. Section 311 of the Code of Criminal Procedure, 1973 (CrPC) corresponding to Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), empowers the Court to summon any person as a witness, examine any person present in Court, or recall and re-examine a witness already examined at any stage of an inquiry, trial, or other proceeding. The Court must exercise this power whenever the evidence of such a person appears essential for arriving at a just decision in the case. The Court can use this power at any stage of the trial if it feels that the evidence of that person is necessary to arrive at a fair decision. The main purpose of this section is to help the Court find the truth and ensure that justice is done.

12. In this context, without multiplying the decisions in the arena, this Court is inclined to rely upon the recent Three-Judge Bench of Hon'ble Supreme Court in ***Sarla Gupta and Another v. Directorate of Enforcement***[2], wherein it was held that an accused cannot ordinarily seek production of unrelied documents at the stage of framing of charges, but such documents may be sought at the appropriate stage of defence under Section 91 Cr.P.C. The relevant paras of ***Sarala Gupta***'s case read as under:

57. Therefore, at the stage of entering upon defence, an accused can apply for the issue of process for the production of any document or thing. 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

[2] (2025) 7 SCC 626

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 233 CrPC.

58. If, according to the case of the accused, the prosecution or any of the witnesses examined by the prosecution is withholding a document, in his cross-examination, the accused can always ask questions to the prosecution witnesses concerned whether they were willing to produce the said document. On the witnesses' refusal or failure, an argument is always available to the accused during the final hearing that an adverse inference should be drawn against the prosecution for non-production of the document. The accused can always invoke the presumption under clause (g) of Section 114 of the Indian Evidence Act, 1872 [clause (g) of Section 119 of the Bharatiya Sakshya Adhiniyam, 2023].

59. When at the stage of defence of the accused, documents are produced on the prayer of the accused and the accused desires to cross-examine any of the prosecution witnesses based on the said documents, it is always open for the accused to apply under Section 311CrPC (Section 348 BNSS) to recall a prosecution witness already examined for further cross-examination. The reason is that the right to effectively cross-examine the prosecution witnesses is also a part of the right to have a fair trial. The accused can exercise this right even if evidence of both sides is closed.

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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) BNSS]. 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 233 CrPC.

68.6. When at the stage of defence evidence of the accused, documents are produced on the prayer of the accused and the accused desires to cross-examine any of the prosecution witnesses based on the said documents, it is always open for the accused to apply under Section 311CrPC (Section 348 BNSS) to recall a prosecution witness already examined for further cross-examination. The reason is that the right to effectively cross-examine the prosecution witnesses is also a part of the right to have a fair trial. The accused can exercise this right even if evidence of both sides is closed.

Emphasis supplied

13. Furthermore, the dictum of the Three-Judge Bench of Apex Court was subsequently reiterated and followed by the Hon'ble Division Bench of Apex Court in ***Suninder Sandha v. State of NCT of Delhi and Another*** [3]***,*** wherein it was also stated that an accused cannot use Section 91 Cr.P.C., to seek documents as a matter of right, at any stage. By relying on the precedent in *Sarla Gupta v. Directorate of Enforcement*, it was held that the appropriate stage for an accused to invoke Section 91 Cr.P.C., for non-relied documents only arises when the accused enters upon their defence evidence, not beforehand. The Court must consider whether the documents sought are relevant and necessary for the case and whether the application is made at the proper stage.

14. Now coming into the case on hand, the right to summon the documents as well re-calling of witnesses are not an absolute right of the accused, but it is for the Court to perceive the material on record and to arrive apt conclusions so

[3] 2025 SCC OnLine SC 3246

as to strike a balance between the rights of the accused as well as the prosecution. However, it is also well-settled that the right to a fair trial is one of the integral facets of Article 21 of the Constitution of India.

15. Having regard to the present stage of the calendar case (CC) before the trial Court, the parameters to be considered at the stage of prosecution evidence are distinct from those applicable while appreciating the same material at the stage of defence evidence. Added to that, keeping note of settled principle that procedural laws are intended to advance the cause of substantial justice and not to defeat it. Therefore, mere procedural irregularity, i.e., stage of filing the petitions under Sections 91 & 311 Cr.P.C., by itself, would not results in the denial of a fair trial to the accused.

16. In this scenario, this Court is not going to venture into the merits and demerits of the case, as the present petitions under Sections 91 and 311 Cr.P.C., filed by the accused, are admittedly before the stage of defence, but are not at the stage of defence. More so, as contended by the learned Special Public Prosecutor, prosecution is not relying upon the enclosures mentioned in Ex.P24. However, learned counsel for the petitioner/accused states that, in order to demolish the case of prosecution and to unravel the truth, those documents as well recall of witness are just and essential. Hence, in the considered view of this Court, it is always open to the petitioner/accused to invoke the relevant statutory provisions at the stage of defence. Such a course

is legally tenable and plausible, as the right to a fair trial is an indispensable and inextricable facet of criminal jurisprudence.

17. It is also relevant to mention that, in view of the fact that the very filing of Section 311 Cr.P.C., is consequential in the light of facts and circumstances set out in the present lis. As the very petition filed under Section 311 Cr.P.C., to recall PW-13 in the very same case, i.e., C.C.No.10 of 2022, is consequential in nature. Thus, in view of the aforesaid categorical findings, these twin petitions are disposed of, by way of common order, leaving it open to the petitioner to file a petition under Section 311 Cr.P.C., along with a petition under Section 91 Cr.P.C., at the stage of defence before the trial Court.

18. Accordingly, these two Criminal Petitions are disposed of, permitting the petitioner to move the proper petitions under Sections 91 & 311 Cr.P.C., at the stage of defence, before the CC No.10 of 2022, if so advised, and on such filing, trial Court is directed to consider and dispose of the said petitions by taking note of the statutory regime and constitutional ethos settled by the Apex Court, without being influenced by the earlier observations, including those made in the impugned Orders dated 21.07.2026 too.

As a sequel, Interlocutory applications pending, if any, shall stand closed.

JUSTICE MAHESWARA RAO KUNCHEAM

Date: 13.10.2026
PSA

THE HONOURABLE SRI JUSTICE MAHESWARA RAO KUNCHEAM

CRIMINAL PETITION Nos: 7085 and 7176 of 2026

Date: 13.10.2026

PSA