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Duration :

**IN THE COURT OF 6th ADDL. DISTRICT & SESSIONS
JUDGE, AT JUNAGADH**

CRIMINAL REVISION APPLICATION NO. 21 OF 2026

Exh.:_____

Applicant :

Niravbhai Rajendrakumar Jaiswal
Aged about: 36 years, Occupation : Business,
Resi. : Nr. Bus Stand, Moti Kunkavav,
Tal. Kunkavav – Vadiya, Dist. Amreli

Versus

Respondent :-

1. The Government of Gujarat,
(Notice to be served through The Ld. Public Prosecutor)
Junagadh, Dist. Junagadh
2. Rohitkumar Ashwinbhai Jaiswal
Age : 32 Yrs., Occupation : Business,
Add. : Nr. Old Water Tank, At Mendarda,
Tal. Mendara, Dist. Junagadh

APPEARANCES:

Mr.J. D. Mehta, Ld. Adv. for the Applicant.

Mr. S. D. Jotaniya, Ld. APP for the State

Mr. D. V. Kumbhani Ld. Adv. for the Respondent No.2

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Revision Application U/s. 438 of BNSS in event of application Ex. 37 in CC/283/2024 in the Court of Judicial Magistrate, First Class, Mendarda

-: J U D G M E N T :-

(1) The short facts of the application is as under :

The Applicant is the original accused in Criminal Case No. 283 of 2024 pending before the Learned Judicial Magistrate First Class, Mendarda, arising out of a complaint filed by Respondent No. 2 under Section 138 of the Negotiable Instruments Act, 1881. During the pendency of the trial, the Applicant filed an application at Exhibit 37 praying that the disputed signature on the cheque be referred to a handwriting expert for comparison with his admitted signatures, as the Applicant has consistently disputed the signature and contended that the cheque is forged and not signed by him. By order dated 10/03/2026, the Learned Trial Court rejected the said application without properly appreciating the necessity of expert evidence and the defence raised by the Applicant. Being aggrieved by the said order, the present Revision Application is preferred.

Grounds for Revisions :

A. The impugned order dt. 10.3.2026 is illegal, arbitrary and contrary to law as the Learned Trial Court failed to appreciate that the genuineness of the signature is the principal issue involved in the complaint under Section 138 of the Negotiable Instruments Act.

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B. The Applicant has specifically denied his signature on the cheque. Therefore, obtaining the opinion of a handwriting expert is essential for proper adjudication of the dispute and for arriving at a just conclusion.

C. The Learned Trial Court failed to consider that expert opinion regarding handwriting is a relevant fact under the provisions of the Bharatiya Sakshya Adhiniyam, 2023 and would materially assist the Court in determining the authenticity of the disputed signature.

D. Though the presumptions under Section 118 and Section 139 of the Negotiable Instruments Act operate in favour of the complainant, they are rebuttable. The Applicant is entitled to lead expert evidence to rebut the statutory presumptions and establish his defence.

E. Rejection of the application has caused serious prejudice to the Applicant and has deprived him of an effective opportunity to establish his defence, thereby affecting his right to a fair trial.

F. It is well settled that where the accused disputes the signature on the cheque, the Court should ordinarily permit examination by a handwriting expert unless such request is found to be frivolous or intended only to delay the proceedings. The impugned order overlooks this settled legal position.

Prayer :-

The Applicant, therefore, most respectfully prays that this Hon'ble Court may be pleased to:

a) Allow the present Revision Application;

- b) Quash and set aside the order dated 10/03/2026 passed below Exhibit 37 in Criminal Case No. 283 of 2024 by the Learned Judicial Magistrate First Class, Mendarda;
 - c) Direct the Trial Court to send the disputed cheque/signature to a handwriting expert for examination and opinion;
 - d) Stay further proceedings of Criminal Case No. 283 of 2024 pending disposal of the present Revision Application; and
 - e) Pass such other and further order(s) as may be deemed fit in the interest of justice.
- (2) On receipt of the service of summons / notice, the Ld. Advocate for the respondent No. 2 has appeared and filed written statement / objection vide Ex. 11 and stated that the present Revision Application is based on incorrect facts and untenable legal grounds. Before filing the complaint under Section 138 of the Negotiable Instruments Act, the Respondent had duly served the statutory legal notice upon the Applicant, but no reply disputing the cheque or the signature was ever given. During the trial, the complainant as well as the concerned bank officials were examined, and at no stage was any dispute raised regarding the signature appearing on the cheque. It is further submitted that the evidence in the trial has already been concluded and the matter is fixed for final arguments. The application at Exhibit 37 seeking a handwriting expert's opinion has been filed only with the intention of delaying the proceedings.

The cheque return memo does not indicate that the cheque was dishonoured due to a signature mismatch. The Learned Trial Court has rightly rejected the application without committing any legal error, and since the revisional jurisdiction is limited, there is no justification for interfering with the impugned order. Hence, the present Revision Application deserves to be dismissed with costs.

(3) From the aforesaid facts, the following points has arisen for determination in this case :-

1. Whether the order of Ld. Trial Court passed in **CC/283/2024 dt. 10.3.2026** is incorrect, illegal and inappropriate in its findings and therefore, the said order is required to be set aside by this court ?

2. What order ?

(4) My Answer for aforesaid Issue are as under :

1. In Affirmative.

2. As per final order

Reason

(5) Ld. Advocate of applicant has submitted to consider their argument as per the application and it is prayed to allow the present revision application.

While Ld. Advocate of respondents has argued in consonance with the reply filed to the present application and has stated to disallow the present revision as the

accused had not raised any dispute about the signature on the cheque.

- (6) I have considered the record and submission advanced by the Ld. Advocate of both side.

Point No.1

- (7) The scope of revision is discussed by the Hon'bel Supreme Court in Rajendra Rajoriya VS. Jagat Narain Thapak and another (2018) 17 SCC 234 , in para -11 and 12 as under .

" 11. At the outset, before we decide the legality of the remand order, we are required to determine the scope of criminal revision under Section 397 read with Section 398 of Cr.P.C. It would be appropriate to reproduce Sections 397 and 398 of Cr.P.C herein.

Section 397. Calling for records to exercise powers of revision.

- (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or

order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.

Section 398. Power to order inquiry. On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 of Sub-Section (4) of section 204 or into the case of any person accused of an offence who has been discharged: Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

12. A perusal of the aforesaid provisions portray that the revisionary power is exercised either by the Sessions Court or by the High Court and a dismissal of the complaint by the Magistrate under Section 203 of Cr.P.C may be assailed in a criminal revision under

Section 397 of Cr.P.C. The ambit of revisional jurisdiction is well settled. Section 397 of Cr.P.C empowers the Sessions Judge to call for and examine the record of any proceeding before any subordinate criminal court situate within its jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such subordinate Court."

- (8) Further, in the Revision, the Hon'ble High Court and Session Court can exercise the said power U/s. 397 of CR.P. C. The Revisional court may called for and examined the records of any proceeding before any inferior criminal court situated within its or his local jurisdiction for the purpose of satisfying itself or himself as to correctness, legality or propriety of any finding, sentence or order. In revision, the revisional has right to bring his case to the notice of this court, and whether interfearence is necessary in the interest of justice is discretionary. The objection of Sec. 397 is to prevent mis-carriage of justice and it gives power to the court mentioned in it to called for the records of inferior court. The Session Court must be satisfied U/s. 397 that :-
- a. the proceeding must be that of a crimnal court
 - b. such court must be an inferior court
 - c. such court must be situating within the local limit of the

jurisdiction of the revision court and

d. the purpose for which the records are called for should be one to enable the revision court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such inferior court.

- (9) The present applicant filed application before the trial court for sending the cheque for the opinion of hand writing expert as the cheque doesn't bear signature of accused as well as the other writing is also not in his hand. The Lt. trial court has disallowed the said application on the ground that considering the conduct of the accused at the inception of the proceeding, the accused did not raise any objection regarding the authenticity of the signature. However, considering the cross-examination of complaint Exh.6, it appears that the accused has put his defence not specifically but in the form of suggestion about his signature and its body writing. Further, the considering the statement of accused recorded under S.313 of Cr.P.C, it appears that the accused has taken defence about signature and sought to get the report of handwriting expert in respect of cheque. Further, as per settled law, the accused can raise probable defense from the evidence of the complainant also as well as in the cross examination of complainant. The Hon'ble Gujarat High Court in case reported in 2022 (0) AIJEL - HC- 244469 Shashikant Shamaldas Patel Vs. St. of Gujarat has held in para-9 to 12

as under.

" **9.** Having heard the learned advocates on record, it appears that the petitioner has raised the grievance that the disputed cheque was a blank cheque issued in 2011 and has been misused in 2018. As per the accused, the complainant is not the holder in due course. The cheque was fabricated in the year 2018 and it was not against any legal debts or liabilities. It was also urged that the complainant had no source of income to lend Rs.10 Lacs and thus, there was no enforceable debt. The accused had also filed a complainant under sections 406, 420, 506(2) and 114 of IPC and thereafter, the Chapter Case under Section 107 of Cr.P.C. was filed against the complainant and witness Amratbhai Gopalbhai Patel. It is alleged by the petitioner accused that Amratbhai Gopalbhai Patel, who was his partner, has given the said cheque in the year 2011 for 2-3 days as the complainant insisted for a blank cheque. It was informed to the petitioner accused that the complainant had torn off the cheque and therefore, the petitioner, on assurance so given, had not proceeded further but thereafter, according to him, the complainant and Amratbhai Gopalbhai Patel in collusion have misused the cheque and filed false complaint under section 138 of the N.I. Act.

10. In T. Nagappa v. Y.R. Muralidhar (supra), the Apex Court has observed as under:

"7. When a contention has been raised that the complainant has misused the cheque, even in a case where a presumption can be raised under Section 118(a) or 139 of the said Act, an opportunity must be granted to the accused for adducing evidence in rebuttal thereof. As the law places the burden on the accused, he must be given an opportunity to discharge it. An accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognized by the Parliament in terms of sub-section (2)

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of Section 243 of the Code of Criminal Procedure, which reads as under : "Section 243 - Evidence for defence. (1) (2) If the accused, after he had entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross- examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing: Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice."

8. What should be the nature of evidence is not a matter which should be left only to the discretion of the Court. It is the accused who knows how to prove his defence. It is true that the court being the master of the proceedings must determine as to whether the application filed by the accused in terms of sub-section (2) of Section 243 of the Code is bona fide or not or whether thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc. If permitted to do so, steps therefor, however, must be taken within a limited time. There cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protracting the trial or summon witnesses whose evidence would not be at all relevant.

9. The learned Trial Judge as also the High Court rejected the contention of the appellant only having regard to the provisions of Section 20 of the Negotiable Instruments Act. The very fact that by reason thereof, only a prima facie right had been conferred upon the holder of the negotiable instrument and the same being subject to the

conditions as noticed hereinbefore, we are of the opinion that the application filed by the appellant was bona fide.

The issue now almost stands concluded by a decision of this Court in Kalyani Baskar (Mrs.) v. M.S. Sampooram (Mrs.) [(2007) 2 SCC 258] (in which one of us, L.S. Panta, J., was a member) wherein it was held :

"12. Section 243(2) is clear that a Magistrate holding an inquiry under CrPC in respect of an offence triable by him does not exceed his powers under Section 243(2) if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert. The appellant is entitled to rebut the case of the respondent and if the document viz. the cheque on which the respondent has relied upon for initiating criminal proceedings against the appellant would furnish good material for rebutting that case, the Magistrate having declined to send the document for the examination and opinion of the handwriting expert has deprived the appellant of an opportunity of rebutting it. The appellant cannot be convicted without an opportunity being given to her to present her evidence and if it is denied to her, there is no fair trial. "Fair trial" includes fair and proper opportunities allowed by law to prove her innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed, and the courts should be jealous in seeing that there is no breach of them."

11. The decision rendered in Kalyani Baskar v. M.S. Sampooram (supra) was followed in the case of T. Nagappa v. Y.R. Muralidhar (supra). In the present case, in his complaint filed under Section 138 of the NI Act, the complainant has stated that the accused had given him the disputed cheque

with his signature on it and had informed him that if the cheque is deposited on the date so mentioned, he would receive the amount mentioned in the cheque. As per the complainant, after depositing the said cheque on 15.11.2018, the same got returned owing to the account being closed. Thus, after legal notice, the complaint was filed. The facts in the complaint suggest that the signed cheque was handed over but the facts in the complaint also suggests that he was informed that the complainant would receive the amount so mentioned in the cheque. While it is the case of the complainant that it was a cheque that was signed "in blank" while the facts suggest that the cheque amount was also noted in the cheque, which the complainant has disputed. It is his specific case that the cheque was given in the year 2011 while it was misused in 2018. Since there was no direction to pay the amount so stated to be mentioned in the cheque, the applicant has disputed the age of ink utilized for the signature of the applicant on the cheque and prayed for comparison of the ink used for text on the body of the cheque, alleging that the endorsement was not "in full" on the instrument. However, considering the facts and circumstances of the case and the principle laid down by the Apex Court in T. Nagappa v. Y.R. Muralidhar's case (supra), the petitioner is required to be granted opportunity for adducing evidence keeping in mind the larger object of fair trial. Hence, the impugned orders passed by the Courts below deserve to be quashed and set aside.

12. For the foregoing reasons, the application is allowed. Both the impugned orders dated 23.08.2021 passed by the learned 3rd Additional Sessions Judge, Gandhinagar in Criminal Revision Application No.29 of 2021; and dated 04.03.2021 passed by the learned 5th Additional Chief Magistrate, Gandhinagar below application Exhibit-32 in Criminal Case No.87 of 2019 are quashed and set aside. The trial Court concerned is directed to send the disputed cheque to F.S.L. for opinion of the Hand-writing Expert, as

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has been prayed for in the application Exhibit-32. All concerned to make sincere efforts to ensure that the trial is concluded as expeditiously as possible. Rule is made absolute."

In view of the above decision as well as the catena of judgments on this line, it appears that the order passed by the Ld. trial court is not consonance with the settled principle of law in this regard and the Learned Trial Court failed to exercise its discretion judiciously and overlooked the settled principle that where the execution or signature on a cheque is specifically disputed, expert examination should ordinarily be permitted unless the request is found to be frivolous or intended solely to delay the proceedings.

- (10) In view of above discussion , the impugned order deserves to be quashed and set aside in the interest of justice. Hence, I give my answer to point No.1 in Affirmative and passed following final order.

Order

1. The present revision application is hereby allowed.
2. The order passed by the Ld. Trial Judge below Exh.37 dated 10-03-2026 in C.C. No.283/2024 is hereby set aside.
3. The Ld. Trial court is directed to send the original cheque for the opinion hand writing expert of F.S.L. as prayed in application Exh.37 at the expense of accused/applicant.
4. Original R & P be sent back to the Ld. Trial Court with the copy of this judgement .

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Date: 24.07.2026.

(A. R. RANA)

JUNAGADH

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JUNAGADH

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