

GJKH010031562026



Presented on : 25-05-2026
Registered on : 25-05-2026
Decided on : 01-07-2026
Duration : 0y, 1m, 06 d

**IN THE COURT OF
PRINCIPAL DISTRICT JUDGE AT NADIAD, KHEDA
PRESIDED OVER BY MR. PARVEEN KUMAR**

CR RA NO. 36 OF 2026

Exhibit No.:

Revisionist :-

Latifbhai Mahammadbhai Sheikh
Age:- 47 years, Occ. Driving,
R/o. Gandhipura, Tal: & Dist: Kheda.

V E R S U S

Respondent:-

1. Rakeshbhai Jashbhai Patel,
Age:- 66 years, Occ. Farming,
R/o. Moto Patelvado, Tal: & Dist: Kheda.
2. State of Gujarat

Appearance :-

Ld. Advocate **Mr. M. B. Vidhwani**, for the revisionist.
Ld. Advocate **Mr. V. D. Parekh**, for the Respondent.
Ld. PP **Mr. D. R. Barot** for the State.

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

- 1] This revision petition is directed against the order dated 22-04-2026, passed below Exh. 34 and order dated 07-05-

2026, passed below Exh. 35 & 36, moved Ld. Counsel for accused and defacto complainant, respectively, vide which the application Exh. 34, moved for examining two more defense witnesses, was rejected by the Learned Addl. Chief Judicial Magistrate, Kheda, and application below Exh. 35, moved by Ld. Counsel for accused, for adjournment, was rejected and application Exh. 36, moved by Ld. Counsel for defacto complainant, was allowed, by the Court of Ld. ACJM, Kheda, in the CC No. 854 of 2025.

- 2] Upon notice, Mr. V. D. Parekh, Ld. Advocate appeared on behalf of defacto complainant and on behalf of State, Ld. PP, Mr. D. R. Barot, appeared.
- 3] Succinctly put, the accused moved application(Exh. 34) before the Ld. Trial Court, for examining two witnesses i.e. brother-in-law of the accused, to prove that the service of notice was not effected upon him and one PSO, of Kheda Town Police Station, but Ld. Trial Court, rejected the same, while observing that accused is intentionally delaying the proceeding and moreover, three defense witnesses have already been examined and still he intends to examine two other witnesses, whereas, merits of the case are not going to be effected. On 07-05-2026, Ld. Counsel for accused moved application for adjournment, but same was rejected and at the same time, the application of Ld. Counsel for defacto complainant for closing the right of the accused, was allowed.

- 4] Learned Advocate for revisionist has assailed the order by contending that as per the report of the Post Department the notice was served upon the brother-in-law, of the accused, whereas, he had not received any notice as such. Furthermore, regarding a previous case of consuming sleeping pills matter was reported to the Kheda Police Station, hence, deposition of the brother-in-law of the accused and PSO is very much essential for the just decision of his case and in case of refusal, prejudice will be caused to him.

On the other hand, Ld. Counsel for defacto complainant, has strongly objected to the contents of the revision petition, by contending vehemently that the instant revision is not maintainable because same has been filed under section 440 of BNSS(399 of CrPC), whereas, same should have been filed under section 438 of the BNSS. He has further contended that residential address of the accused is not in dispute and the said notice was served upon that address, hence, as per clause 27 of general clauses Act. The contention of the Ld. Counsel for the revisionist are not legally tenable. He has further contended that from the revision petition, it appears that the same has been filed challenging the orders passed below Exh. 34 & 36 only. He has further contended that the entire proceeding are being initiated by the Ld. Counsel for accused to linger on the proceedings and in defense he has already examined witnesses as per the list submitted by him. He has further contended that the list

moved again for examining other two witnesses is apparently is a intentional attempt to linger the proceedings and Ld. Trial Court has rightly given its findings. He has further contended that the application Exh. 36, moved by him, was rightly allowed by the Ld. Trial Court, by closing his right. Broadly with these submissions, he has prayed that the instant revision petition, is devoid of merit because the orders challenged do not suffer from any illegality, perversity or incorrectness.

5] In view of the rival contentions of the parties, the following points arise for determination :

- 1) Whether the impugned order is liable to be set aside ?
- 2) What order ?

6] My findings to above points follows as :

- 1) In the affirmative.
- 2) As per final order.

// R E A S O N S //

7] It is a settled proposition of law that revision is a process for the satisfaction of the revisional court regarding the legality, propriety or correctness of any sentence, findings and order of any inferior court. In the case of **Malkeet Singh Gill V/s State of Chhatisgarh, 2022 (8) SCC 204**, it has been held that "the scope of interference in revision is extremely narrow. The object of the provision is to set right a patent defect or any error of jurisdiction of law.

There has to be well founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings".

- 8] From the perusal of the depositions, of the witnesses and other record produced by the parties in the CC No. 854 of 2025, it appears that Branch Post Master examined vide Exh. 27, has stated that the post was in the name of Latifbhai Sheikh and at the time of service, Latifbhai was not present, so he delivered the post to his brother-in-law and the time of delivery has been shown as 9:26 PM. The witness has further stated that after distribution of the post in the day time, when he remains free, the entries regarding delivery of the post, are completed. According to the deposition of Liyakatkhan Pathan, ASI, Kheda Town Police Station(Exh 29), telephonic information was received to the effect that Latifbhai Sheikh had consumed sleeping tablets and in that connection the statements were recorded. Ld. Counsel for the accused intends to examine the PSO, of the Kheda Town Police also to bring on file the facts regarding that incident.
- 9] It is added here that according to section 27 of the General Clauses Act, 1897, as argued by Ld. Counsel for defacto complainant, when notice is sent on a proper address, but neither unserved notice nor the acknowledgment cards is received, in that event, notice must be taken to have been served and then addressee has to prove that the notice was

not delivered to him, however, to the contrary, in the case on hand, as per facts, the notice was served upon one Latifkhan as per the Post Master and Ld. Counsel for accused wants to examine that Latifkhan. Furthermore, statements were written in the Police Station, as per the deposition of the Liyakatalikhan Pathan, examined as Exh. 29 regarding consumption of sleeping pills etc. and to prove the connection of the same, accused intends to bring on file the said facts. From the perusal of the contents of the application(Exh. 34), it does not appear that the said application was moved to linger on the proceedings, rather it would be convenient to come to logical conclusion, if entire facts are brought on the record. By not giving an opportunity of examining the said witnesses, would definitely prejudice to the rights of the accused, hence, it appears that Ld. Trial Court has not decided the said application correctly and the order passed below Exh. 34 as well as and consequent other order passed below Exh. 36 are required to be interfered.

- 10]** In consonance with the aforesaid discussions, the Point No. 1 is answered in the Affirmative and in regard to Point No.2, following order is passed.

ORDER:

This Revision Application is hereby allowed with direction that Ld. Trial Court shall afford appropriate opportunity of examining the witnesses to the accused as per the application Exh. 34 and, thereafter, the matter shall be decided in accordance with law and on its own merits, for

which, this Court has not expressed anything in favour of the either parties.

A copy of this Judgment be sent to the concerned Trial Court, along with the R & P, if any, at once.

Signed and Pronounced in open Court on this 01st day of July 2026.

Date : 01/07/2026.

Place: Nadiad.

(PARVEEN KUMAR)
Principal Dist. & Sessions Judge,
Kheda at Nadiad,
GJ01511

Adesh-Directly dictated and typed on Dias Computer.