IN THE COURT OF THE SESSIONS JUDGE,

at Porbandar

Criminal Revision Application

No. 9 of 2025

RAFIK SIDIKBHAI HALEPOTRA…………. Applicant/Accused

Address: Near Nava Kumbharwada, Porbandar.

Versus

1. SHREE RAM FINANCE CO. LTD. (Original Complainant)

Through Authorized signatory and power holder,

Harshil Rameshbhai Rabadiya.

Address: Kuber Vintage, second floor,

Opp. HDFC Bank, Porbandar

2. THE STATE OF GUJARAT

DGP Office …………………………………. Opponents

Date of Judgment: 03.07.2026

Revision Application under section 438 of BNSS against order dated 31.01.2025 passed by the Ld. Chief Judicial Magistrate Porbandar in Criminal Enq. no. 50 of 2023

Appearance:
Mr. S. D. Jokhia, Ld. Advocate for the applicant-accused.
Mr. D. M. Rupareliya, Ld. Advocate for the opponent no.2.
Mr. S. B. Jethwas, Ld. Public Prosecutor for the State

JUDGMENT

[1] The present revision application under Sections 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Sections 397 CrPC) is directed against the order dated 31.01.2025 passed by the learned Chief Judicial Magistrate First Class, Porbandar in Criminal Inquiry No. 50 of 2023, whereby process came to be issued against the applicant for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

[2] The short facts leading to this revision petition are as under:

(a) The respondent instituted a complaint under Section 138 of the Negotiable Instruments Act alleging that the applicant-accused issued cheque No. 905562 dated 10.11.2021 from the bank account maintained with the Uco Bank Porbandar for an amount of Rs. 2,75,000/- towards discharge of a legally enforceable liability of outstanding loan amount.

(b) Upon presentation, the said cheque was returned unpaid with the bank memo recording the reason as "Alterations/Correction on instrument are prohibited under CTS"

(c) Statutory notice under Section 138(b) of the Act was issued and, despite receipt thereof, the accused failed to make payment within the prescribed period.

(d) The complaint was accompanied by an application seeking condonation of 9 days delay in filing the complaint, which was registered as Cr.M.A. no. 12 of 2022. The Ld. Magistrate proceeded to hear both the side and was pleased to condone such delay vide order pased in Cr.M.A. no. 12 ofd 2022 on 13.10.2023 and the complaint was ordered to registered as Criminal Inquiry. The said order is not under challenge in this revision petition.

(e) Pursuant to condoning delay, the complaint was numbered as Criminal Enquiry no. 50 of 2023 as it was deemed fit by the Ld. Chief Judicial Magistrate that it was necessary to hear the respondent-accused having regard to the reason for dishonour of cheque.

(f) The learned Magistrate heard Ld. Advocates for the either side, examined the complaint, verification and supporting documents and issued summon/process against the applicant-accused against vide order passed in Criminal Inquiry no.50 of 2015 on 31.01.2025 and the matter was registered as Criminal Case no. 454 of 2025. Thereafter plea of accused was recorded at Exhibit-11 on 17.11.2025 and the matter was kept for hearing on application for exhibiting the document filed at Exhibit-20.

(e) Aggrieved by the order dated 31.01.2025 in Criminal Inquiry no. 50 of 2023, the present revision has been preferred on 30.04.2025.

Contentions of applicant-accused

[3] The learned advocate for the revisionist submits:

(i) That Section 138 is attracted only when the cheque is dishonoured for insufficiency of funds or exceeding arrangement.

(ii) That dishonour on account of "Alterations/Correction on instrument are prohibited under CTS" is outside the purview of Section 138.

(iii) That the loan was advanced in the year 2015 and the cheque is issues in theyear 2021, therefore the debt is prima facie time barred as per Article 18 of the Limitation Act. Reliance is placed on the decision of Hon'ble Gujarat High Court in case titled Murlilal Birdhichand Rawat Partner of Ratnamani Foods Vs. State of Gujarat and Anr.

(iv) That the Ld. Magistrate has erred in evaluatin ghe evidence on record in proper perspective and has wrongly issued summons to the applicant-accused.

(v) That the continuation of proceedings would amount to abuse of process and therefore the summoning order deserves to be set aside.

Contentions of opponent-complainant:

[3] Per contra, learned advocate for the respondent-complainant submits that:

(i) This revision petition is not maintainable in light of the ratio laid down by the Hon'ble Supreme Court in case titled Adalat Prasad Vs. Rooplal Jindal & Ors reported in (2004) 7 SCC 338.

(ii) The impugned order condoning delay and issuing summons is an interlocutory order and the same cannot be challenged by preferring revision petition and the only remedy available against the impugned order is invoking the inherent powers of the Hon'ble High Court under section 538 of BNSS.

(iii) The argument of cheque issued towards time barred debt is not sustainable. The last EMI was due on 20.04.2017 and three years therefrom would expire on 20.04.2020, however on account of the directions of Hon'ble Supreme Court in case titled In Re:Cognizance for Extension of Limitation [(2020) SCC Online 343 and subsequent order] the limitation period for all proceedings was tolled from 15.03.2020 to 28.02.2022 on account of COVID-19 pandemic, therefore the limitation period stood extended from 20.04.2020 to 28.02.2022 and since the cheque was issued on 10.11.2021 the same was within limitation.

(iv) Issuance of cheque constitutes an acknowledgement of debt which would revive the limitation period. The decision of

Hon'ble Gujarat High Court relied by the applicant-accused is distinguishable on facts.

(v) All the ingredients of section 138 are prima facie satisfied and hence the impugned order is justified inasmuch as at the stage of issuance of process, the Magistrate is only required to ascertain existence of a prima facie case.

[3.1] Ld. Public Prosecutor submits that having regard to the nature of proceedings and the issue involved in this application, the State is a formal party and therefore appropriate order may be passed.

Points for Determination:

[4] The following points arise for determination arise for the just adjudication of this revision petition:

1. Whether a cheque dishonoured with the endorsement "Alterations/Correction on instrument are prohibited under CTS" cannot, under any circumstances, attract Section 138 of the Negotiable Instruments Act?

2. Whether the learned Magistrate committed any illegality or jurisdictional error in issuing process?

3. What order?

[4.1] Findings in respect of the above points of determination are as under:

1. In the negative.

2. In the negative.

3. Revision petition is dismissed.

Reasons for above findings are as under:

[5] At the outset, it is necessary to bear in mind the limited scope of revisional jurisdiction. It is settled legal position that Revisional Court does not sit as an appellate court against an order issuing process. Interference is warranted only where there exists patent illegality, jurisdictional error, perversity or miscarriage of justice.

[5.1] It is settled legal position that the Court is not expected to conduct a mini-trial or appreciate the probable defence of the accused and the scope of inquiry at the stage of issuance of process is very limited, inasmuch as at this stage the Ld. Magistrate is required only to ascertain whether the complaint, verification and accompanying documents disclose a prima facie commission of the offence alleged or not. Detailed examination of defence material is impermissible at such stage. It is settled legal position that process cannot be quashed merely because the accused may ultimately have a defence on merits.

[5.2] It would to apt to note that Section 138 creates a statutory offence when:

(a) a cheque is drawn by a person on an account maintained by him;

(b) the cheque is issued in discharge of debt or liability;

(c) the cheque is returned unpaid;

(d) statutory notice is issued; and

(e) payment is not made within the prescribed period.

[5.3] The expression employed by the legislature is "returned by the bank unpaid" and though the section specifically mentions insufficiency of funds and exceeding arrangement, it has been consistently held that the provision cannot be construed in a narrow and restrictive manner.

[5.4] Having regard to the contention about reason for which the cheque was returned unpaid it would be apt to refer the observations of Hon'ble Apex Court in case titled **M/s Laxmi Dyechem v. State of Gujarat** & Ors., reported in (2012) 13 SCC 375, wherein the Hon'ble Supreme Court considered whether dishonour for reasons such as account closed, payment stopped, refer to drawer, signatures do not match, would fall within Section 138. The Hon'ble Supreme Court held that such contingencies are covered by Section 138 and that a narrow interpretation would defeat the object of the enactment. The relevant observations are as thus:

> *"16. The above line of decisions leaves no room for holding that the two contingencies envisaged under Section 138 of the Act must be interpreted strictly or literally. We find ourselves in respectful agreement with the decision in Magma case [(1999) 4 SCC 253 : 1999 SCC (Cri) 524] that the expression "amount of money ... is insufficient" appearing in Section 138 of the Act is a genus and dishonour for reasons such "as account closed", "payment stopped", "referred to the drawer" are only species of that genus. Just as dishonour of a cheque on the ground that the account has been closed is a dishonour falling in the first contingency referred to in Section 138, so also dishonour on the ground that the "signatures do not match" or that the "image is not found", which too implies that the specimen signatures do not match the signatures on the cheque would constitute a dishonour within the meaning of Section 138 of the Act:*
>
> *16.1. This Court has in the decisions referred to above taken note of situations and contingencies arising out of deliberate acts of omission or commission on the part of the drawers of the cheques which would inevitably result in the dishonour of the cheque issued by them. For instance, this Court has held that if after issue of the cheque the drawer*

closes the account it must be presumed that the amount in the account was nil hence insufficient to meet the demand of the cheque. A similar result can be brought about by the drawer changing his specimen signature given to the bank or in the case of a company by the company changing the mandate of those authorised to sign the cheques on its behalf. Such changes or alteration in the mandate may be dishonest or fraudulent and that would inevitably result in dishonour of all cheques signed by the previously authorised signatories. There is in our view no qualitative difference between a situation where the dishonour takes place on account of the substitution by a new set of authorised signatories resulting in the dishonour of the cheques already issued and another situation in which the drawer of the cheque changes his own signatures or closes the account or issues instructions to the bank not to make the payment. So long as the change is brought about with a view to preventing the cheque being honoured the dishonour would become an offence under Section 138 subject to other conditions prescribed being satisfied.

16.2. There may indeed be situations where a mismatch between the signatories on the cheque drawn by the drawer and the specimen available with the bank may result in dishonour of the cheque even when the drawer never intended to invite such a dishonour. We are also conscious of the fact that an authorised signatory may in the ordinary course of business be replaced by a new signatory ending the earlier mandate to the bank. Dishonour on account of such changes that may occur in the course of ordinary business of a company, partnership or an individual may not constitute an offence by itself because such a dishonour in order to qualify for prosecution under Section 138 shall have to be preceded by a statutory notice where the drawer is called upon and has the opportunity to arrange the payment of the amount covered by the cheque. It is only when the drawer despite receipt of such a notice and despite the opportunity to make the payment within the time stipulated under the statute does not pay the amount that the dishonour would be considered a dishonour constituting an offence, hence punishable. Even in such cases, the question whether or not there was a lawfully recoverable debt or liability for discharge whereof the cheque was issued would be a matter that the trial court will examine having regard to the evidence adduced before it and keeping in view the statutory presumption that unless rebutted the cheque is presumed to have been issued for a valid consideration."

[5.5] It flows from the above referred observations that the two contingencies envisaged under section 138 namely, *'either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with* *that bank'* need not be interpreted strictly or literally. It is thus clear that section 138 of the N.I.Act would also cover certain other reasons for dishonour, particularly where the drawer's act or omission results in non-payment and therefore Court is required to examine the substance of the dishonour, and not merely the wording of the return memo.

[5.6] In the case at hand the reason for dishonour or return of cheque is mentioned as "Alterations/Correction on instrument are prohibited under CTS". It is true that if the cheque contains an unauthorised material alteration that renders the instrument void under Section 87, and if the alteration was not made or authorised by the drawer, the cheque may not be enforceable, and Section 138 may not apply. However, if the applicant-accused himself made the alteration or intentionally caused the cheque to become un-payable, he cannot rely on his own wrongful act to escape liability. Whether the alteration was made by the applicant-accused, the respondent-complainant, or someone else is a question of fact to be decided at trial.

[5.7] It has to be appreciated that The bank's endorsement "Alterations/Correction on instrument are prohibited under CTS" merely states the operational reason for dishonour under the Cheque Truncation System. It does not conclusively determine that the alteration was material, or that who made the alteration, and whether it was authorised, or whether the ingredients of Section 138 are otherwise satisfied. These issues can be determined after recording of evidence.

[5.8] In addition to the above, it would also be pertinent to note that as per the allegations made in the complaint, pursuant to dishonour of the cheque on 15.11.2021, the respondent-complainant issued legal demand notice on 10.12.2021 which appears to have been served to the applicant-accused on 11.12.2021, however despite having received the demand notice informing him that the cheque had been dishonoured on account of the reason that the alterations/corrections on the cheque are prohibited under CTS, the applicant-accused did not choose to respond to the said notice. If the applicant-accused had responded to such notice by putting forward his version, the situation would be different; however, since the applicant-accused failed to respond to the demand notice, the determination of issue as to at whose instance the alterations were made would become subject matter of trial.

[5.9] Having regard to the nature of issue inovlved in this revision petition and the reason for dishonour of cheque it would be apt to refer the decision of Hon'ble the Supreme Court in case titled ***Veera Exports vs. T. Kalavathy,*** reported in (2002) 1 SCC 97, wherein the Hon'ble Supreme Court, after taking note of the provisions contained in Section 87 of the Negotiable Instruments Act, observed as under:

> *"In the impugned judgment it has been held that the defence that the alteration in the date was not made voluntarily was a question of fact which would not constitute a ground for quashing the complaint. However, after so holding correctly, the Court goes on to state that the validity period of a cheques is only 6 months. It was held that the validity period of all the 8 cheques had already expired by October, 1995, and then held that once the validity period was over, the cheques could not be re-validated by altering the dates so as to give fresh life to the cheques for another 6 months. It is held that in law, a cheque which has become invalid because of the expiry*

of the stipulated period could not be made valid by alteration of dates. In our view this reasoning is entirely fallacious. There is no provision in the Negotiable Instruments Act or in any other law which stipulates that a drawer of a negotiable instrument cannot re-validate it. It is always open to a drawer to voluntarily revalidate a negotiable instrument, including a cheque.

The High Court has also placed reliance on Section 87 of the Negotiable Instruments Act, which reads as follows :

"87. Effect of material alteration - Any material alteration of a negotiable instrument renders the same void as against any one who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee - Any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125."

…The first paragraph of Section 87 makes it clear that the party who consents to the alteration as well as the party who made the alteration are disentitled to complain against such alteration e.g. if the drawer of the cheque himself altered the cheque for validating or revalidating the same instrument he cannot take advantage of it later by saying that the cheque became void as there is material alteration thereto. Further, even if the payee or the holder of the cheque made the alteration with the consent of the drawer thereof, such alteration also cannot be used as a ground to resist the right of the payee or the holder thereof. It is always a question of fact whether the alteration was made by the drawer himself or whether it was made with the consent of the drawer. It requires evidence to prove the aforesaid question whenever it is disputed.

10. It is held by the High Court that a change of date is a material alteration which affected the interests of the respondent. It is held that the respondent not being a willing party to the said alteration, the cheques were void as contemplated by Section 87 of the Negotiable Instruments Act. At this stage there is no basis for arriving at such a conclusion. In the earlier part of the impugned judgment, it has been correctly held that this is a question of fact. This is a fact which will have to be established on evidence during trial. At this stage the High Court could not have quashed the complaint merely on the basis of an assertion in the reply."

[5.10] From the above referred decision, it can be safely inferred that the issue as to whether the alterations made in the cheque, which is subject matter of the impugned complaint, have been made at the instance of the petitioner or at the instance of the respondent, can be determined only after trial as the same is a question of fact which cannot be gone into at this stage of proceedings.

[6] Perusal of the cheque in question reveal that there is no apparent alteration. The return memo cites reason as 'Alterations/Corrections on instruments are prohibited under CTS' and the scanned copy of cheque is affixed thereunder, but there is no encircling of such alterations/corrections in the return memo. At the most it could be inferred that there is some overwriting while writing the amount in words, more particularly the word 'seventyfive'. Further it is also evident that the date, name of payee and amount in figures and words are in different ink and handwriting as compared to the signature of drawer of the cheque. However, that alone would not render the complainant deprived of proceeding further with the complaint and the impact of such alteration/correction could be decided after recording of evidence.

[6.1] In this regard it would be apt to refer the decision of Hon'ble Madras High Court in case titled ***S. Deepalakshmi*** *V/S* ***Arumugam*** [Crl.O.P.No.7681 of 2024 & Crl.M.P.Nos.5574 & 5575 of 2024] wherein while dealing with identical issue it was observed as thus:

> *5. The short point involved in this case is whether the alternation in the subject cheque will attract Section 87 of N.I Act, if not, whether return of cheque for that reason will not attract offence under Section 138 of N.I Act. Section 87 of the Negotiable Instrument Act, 1881 reads as below:-*
>
> *Section 87: Effect of material alteration.*

Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties;

Alteration by indorsee.—And any such alteration, if made by an indorsee, discharges his indorser from all liability to him in respect of the consideration thereof.

The provisions of this section are subject to those of sections 20, 49, 86 and 125.

6. The above section will apply if the following three conditions are satisfied:-
(i). Alternation must be material.
(ii). Alternation must have been done without the consent of the party.
(iii). Alternation must not have been done to carry out common intention of the original parties.

7. On testing the subject cheque, one could find that there is no material alternation in the cheque. The drawer of the cheque in the second row meant to write the value of the cheque in words, after the word Rupees, she has written number '4'. Then she has scored it off and signed above that indicating that the writing of number '4' and scoring was done by her. After that, she had written the value of the cheque in words as "Four Lakhs Fifty Three Thousand One Hundred and Fifty One Rupees Only". In the box meant for writing the value in figure, she has written Rs.4,53,151/-. Thus, it is very clear that whatever corrections made in the cheque been done voluntarily by the drawer and the said correction is not a material alternation to attract Section 87 of N.I Act.

8. The scanned copy of the cheque is placed below to visualize what the corrections made in the subject cheque and the same is encircled.

9. No doubt, from the above cheque, the name of the bearer i.e., P.Arumugam is in different handwriting and ink. These kind of cheques are known as inchoate cheque as per Section 20 of N.I Act. Such cheques are valid under law.

Section 20 of N.I Act reads as below:-

20. Inchoate stamped instruments.— Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount: provided that no person other than a holder in due course

> *shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.*
>
> *10. The petitioner/accused claims that the cheque was not issued for discharge of any liability towards P.Arumugam/the complainant. The disputed fact regarding liability has to be tested in the trial. The burden to prove is on the parties, subject to certain presumptions.*

[6.2] Thus, it can be inferred that where a cheque is dishonoured because of unauthenticated alteration/correction, the prosecution under Section 138 need not be quashed at the threshold merely because the bank cited the reason as ‘Alterations/Corrections on instruments are prohibited under CTS’. If the prosecution alleges that the alteration was attributable to the drawer or was intended to defeat payment, the matter should ordinarily proceed to trial. Further, perusing the cheque in question and considering the reason for dishonour of cheque, coupled with the ratio emerging from the above referred decisions, this Court is of the view that Ld. Trial Court was justified in issuing summons to the applicant-accused.

[6.3] The contention of applicant-accused with regard to time barred debt would stand addressed by noting that the cheque in question appears to bear signature of the applicant-accused and therefore, whether the cheque was issued voluntarily; whether the cheque was issued towards a legally enforceable debt; and whether the statutory presumptions under Sections 118 and 139 stand rebutted, are matters which can be adjudicated only after parties lead evidence. At the stage of issuance of process, such disputed questions cannot be conclusively determined. Sections 118 and 139 of the Negotiable Instruments Act create presumptions in favour of the holder of the cheque. The extent and manner in which such presumptions may be rebutted is a matter for trial. The accused cannot seek adjudication of disputed factual defences in revisional proceedings arising from an order issuing process.

[6.4] At the stage of issuance of process, the Ld. Magistrate is required only to ascertain whether the complaint discloses the ingredients of Section 138. Once issuance of the cheque and its dishonour are prima facie shown, the statutory presumptions under Sections 118 and 139 operate in favour of the complainant. The issue as to whether the debt was legally enforceable would be a matter of defence to be established by the accused during trial.

[6.5] The complaint prima facie discloses (i) issuance of cheque; (ii) presentation within limitation; (iii) dishonour of cheque; (iv) issuance of statutory notice; and (v) failure to make payment. The learned Magistrate has considered the complaint and supporting documents before issuing process and such there is no jurisdictional error, perversity or patent illegality in the impugned order. Accordingly, this Court does not find any ground warranting interference.

ORDER

(a) This Criminal Revision Application stands dismissed.

(b) The order dated 31.01.2025 passed by the learned Chief Judicial Magistrate First Class, Porbandar in Criminal Inquiry No. 50 of 2023 is hereby confirmed.

(c) It is clarified that observations made in this judgment are confined to adjudication of the present revision and shall not influence the trial on merits.

(d) The matter shall be listed by the Ld. Trial Court on 17.07.2026 and the parties are directed to appear before the Ld. Trial Court on the said date and co-operate the Ld. Trial Court in expeditious disposal of the matter having regard to the fact that the dishonour of cheque dates back to 11.10.2021.

(e) In view of the issue involved in this application and the background of the parties, they shall bear their respective costs.

(f) Record and Proceedings be transmitted to the Ld. trial court forthwith along with a copy of this judgment.

It is clarified that any observation made in this order shall not be construed as adjudication of any of the issue of merits, and the Ld. Trial Court shall decide all the rights and contentions of parties without being influenced by any observations made in this order

Pronounced in the open Court on this 3rd Day of July, 2026

Date: 03.07.2026

[M. A. Bhatti]
Sessions Judge, Porbandar.
UI Code: GJ01506