

MHCC020006782025



Presented on	10/01/2025
Registered on	10/01/2025
Decided on	16/10/2025
Duration	00Y/09M/06D

IN THE SESSIONS COURT FOR GREATER MUMBAI
AT MAZGAON MUMBAI

CRIMINAL REVISION APPLICATION NO.67 OF 2025

Mr. Dharmendra Satramdas Panjwani
Hindu Adult, Indian Inhabitant,
Aged about 50 years, Add: Room No.129, ...**APPLICANT**
Block No.4, Kopari Colony, Thane(E).

VERSUS

1. Miss Vanita Vitthal Shirishkar
Hindu Adult, Indian Inhabitant,
Add: 61, Devibhavan CHS Ltd. 38, ...**RESPONDENTS**
Nepansi Road, Mumbai – 400036.
2. State of Maharashtra.

Mr. Inder Yadav, learned advocate for applicant.
Ms. Akshata Borade, Ld. Advocate for respondent.

**CORAM : H. H. THE ADDITIONAL SESSIONS JUDGE, SHRI KUNAL
DHANAJI JADHAV, COURT ROOM NO.87.**
DATED : 16th October, 2025.

J U D G M E N T

(Delivered on 16.10.2025)

1. The present revision application is filed under Section 397 of Cr.PC. against the impugned order dated 05.11.2024 pronounced by the Learned Metropolitan Magistrate, 14th Court, Girgaon, Mumbai in C. C. No.806/SS/2020.

2. The facts, in brief, are that, respondent filed complaint

against the applicant for dishonoured of cheque. The learned Magistrate after taking cognizance of the matter released the applicant on bail and subsequently, the respondent filed affidavit in evidence. On 10.10.2022 respondent filed application for no cross order and the applicant filed application for adjournment and the adjournment was allowed subject to cost. Subsequently, on 22.11.2022 applicant filed application for adjournment which was rejected and on the same day no cross order was passed below Exh.7 i.e. affidavit in evidence. On the same day complainant filed application under Section 143-A of NI Act. The accused subsequently replied the application and by order dated 04.05.2023 the applicant was directed to take 10% of disputed cheque amount. Subsequently, the applicant filed application under Section 91 of Cr.PC. which after hearing was rejected. Thereafter, the matter was fixed for statement under Section 313 of Cr.PC. The said statement came to be recorded and at this moment the applicant learnt about the no cross order passed. Therefore, the applicant filed application at Exh.42 for setting aside no cross order which was rejected after hearing and therefore, this revision application came to be filed.

3. It is submitted that the learned Magistrate has not followed the principles of natural justice. The applicant filed application for setting aside no cross immediately after knowledge of the order. The magistrate failed to consider that the applicant had obeyed the earlier order and ought to have set aside the no cross order. The learned Magistrate has not given opportunity of cross-examination therefore, the order of the magistrate requires to be interfered.

4. Notice was issued. Respondent appeared and objected the

application. It is submitted that the applicant denies the content of the application. The application is abuse of process of law. The reason in the application is not proper. The order of no cross passed by the learned Magistrate is only because of inordinate delay for conducting cross-examination. The learned Magistrate has no authority to review its own order. Section 311 of Cr.P.C. does not empower to set aside its own order, recall or re-examine any person as witness. The order of learned Magistrate is correct. Hence, prayed to dismiss the Revision Application.

5. Heard advocate for applicant and respondent. Perused record. Following points arise for consideration, findings against it and reasons following thereto:

Sr. No.	POINTS	FINDINGS
1.	Whether the revision is maintainable ?	... <u>In the negative.</u>
2.	Whether the order of Ld. Magistrate is correct, legal and proper ?	... <u>Redundant.</u>
3.	Whether the order of Ld. Magistrate is require to be interfered ?	... <u>Redundant.</u>
4.	What order ?	... <u>As per final order.</u>

REASONS

As to point No.1 :

6. Advocate for applicant submitted that, the applicant filed application for cross-examination of complainant. Applicant filed application immediately on the knowledge of the order of no cross. The learned Magistrate considered the application under Section 311 of Cr.P.C. and rejected the application. By the order of the learned Magistrate, right of accused of cross-examination is taken away and therefore, this revision is maintainable. Applicant is ready to complete the cross-examination and an opportunity be given to the applicant.

The advocate for the applicant has relied on the judgment of **Honnaiah T. H. Vs. State of Karnataka and Others arising out of SLP(Crl) No.2021 of 2022 in Criminal Appeal No.1147 of 2022 dated 04.08.2022**. Thus, submitted that, revision application is maintainable.

7. Advocate for respondent submitted that sufficient opportunity is granted for cross-examination. The accused is delaying the matter. The learned Magistrate has no authority to review its own order. Therefore, the order of learned Magistrate cannot be revised in this Court as the order is interlocutory order. The advocate of the respondent relied on the judgment of **Farhan Vs. State of Kerala, 2024 SCC OnLine Ker 6134, Adalat Prasad Vs. Rooplal Jindal and Ors, (2004) 7 SCC 338, Shankar Lotlikar Vs. Pundalik Venktesh Verlekar arising out of Cri. W.P. No.253/2019 by Hon'ble Bombay High Court at Goa dated 09/03/2020**.

8. The advocate for the respondent further submitted that, previous orders rejecting the application under Section 311 of Cr.PC. and Under section 145(2) of Negotiable Instrument Act are not challenged. No cross order therefore, remains as it is. Hence, prayed to reject the application.

9. By this Revision Application, the applicant is challenging the order of learned Magistrate rejecting the application to set aside no cross order. If at all, the applicant intends to examine the complainant, law provides option under Section 145(2) of Negotiable Instrument Act and as per the directions of the Hon'ble Supreme Court in the case of **Indian Bank Association Vs. Union of India, (2014) 5 SCC 590** wherein, the Hon'ble Supreme Court has observed that, on the

appearance of accused matter shall be fixed for defence and unless application is made under Section 145(2) of Negotiable Instrument Act for recalling of witness for cross examination no further examination can be allowed. Thus, Section 145(2) of Negotiable Instrument Act if read alongwith Section 311 of Cr.P.C. they have the same tenor i.e. recalling of witness for examination. There is no provision in Cr.P.C. or Negotiable Instrument Act to recall the order of no cross passed by the Magistrate but, the Magistrate may permit accused to examine the witness by way of the powers under Section 145(2) of Negotiable Instrument Act as Negotiable Instrument Act is a special statute and overrides the Criminal Procedure Code and therefore, recalling of witness application must be considered under Section 145(2) of Negotiable Instrument Act.

10. By way of the application at Exhibit-42, the applicant intends to call upon the learned Magistrate to set aside/ recall its order of No Cross. Section 362 of Cr.P.C. limits the Magistrate's power to make any corrections in the order. The Hon'ble Supreme Court in the case of **Adalat Prasad Vs. Rooplal Jindal and Ors, (2004) 7 SCC 338** has ruled that the learned Magistrate has no power to recall its own order. The Hon'ble Supreme Court in the case of **Bindeshwari Prasad Singh Vs. Kali Singh AIR 1977 SC 2432** held that -

“.....there is absolutely no provision in the Code of Criminal Procedure of 1898 empowering a Magistrate to review or recall an order passed by him. Code of Criminal Procedure does contain a provision for inherent powers, namely, Section 561A which, however, confers these powers on the High Court and the High Court alone. Unlike Section 151 of Civil Procedure Code, the subordinate criminal courts have no inherent powers. In these circumstances,

therefore, the learned Magistrate had absolutely no jurisdiction to recall the order dismissing the complaint. The remedy of the respondent was to move the Sessions Judge or the High Court in revision.”

11. The tenor of the above citation is that the accused ought to have filed revision against the order dated 22.11.2022 below Exh.7. The order dated 22.11.2022 below Exh.7 is not challenged in this Revision or in any other matter. The impugned order in this revision is dated 05.11.2024 which is on an application for calling upon the learned Magistrate to set aside no cross. The learned Magistrate has no power to set aside the order dated 22.11.2022.

12. Now, while considering the maintainability of the application reference to be made to sub Section 2 of Section 397 of Cr.PC. The said provision bars the revision against interlocutory order. The Hon’ble Supreme Court while defining interlocutory order has coined a category of order which is called as intermediate order. Reliance can be placed on the judgment of **Amar Nath and Others Vs. State of Haryana and Another (1977) 4 Supreme Court Cases 137**. The Hon’ble Supreme Court in the said judgment observed that, orders which are matters of moment and which affect or adjudicate the rights of accused or a particular aspect of trial cannot be stated to be interlocutory order. The Hon’ble Supreme Court while illustrating the orders which are interlocutory in nature relied upon the judgment of **Central Bank of India Vs. Gokal Chand AIR 1967 SC 799** wherein the Hon’ble Supreme Court has illustrated the orders which can be interlocutory. In the said illustration the Supreme Court observed that, orders regarding summoning of witness, discovery, production and

inspection of documents, issue of commission for examination of witness, inspection of premises, fixing a date of hearing and the admissibility of documents or relevance of a question are interlocutory orders. The same were accepted as interlocutory orders in the case of Amar Nath. Recently, the Hon'ble Supreme Court in the case of **Sethuraman V/s. Raja Manikam, 2009 (5) SCC 153** held that, the order under Section 311 Cr.P.C. is an interlocutory order. As per Judgment of V.C. Shukla Vs. The State and the judgment of **K. K. Patel and another Vs. State of Gujarat and Another, (2000) 6 Supreme Court Cases 195** it is observed that, if the objection raised by a party is such that, it would result in culminating the proceedings then order passed on such objection would not amount to interlocutory order. Thus, the order challenged is reversed must culminate the proceedings. Such is not the position in the present case.

13. Admittedly, the applicant wants to examine the complainant and for the same intends to recall the complainant. Admittedly, order below Exhibit-07 dated 22.11.2022 in the criminal case is not challenged by the applicant. The said order has reached finality and therefore, the Magistrate was lacking powers to allow the applicant to cross examine the complainant. In these circumstances and in view of the judgment of Hon'ble Supreme Court the impugned order below Exhibit-42 in C.C. No.806/SS/2020 is an interlocutory order and thus cannot be assailed in a revision. Hence, I answer point No.1 in the negative.

As to point Nos.2 and 3 :

14. In view of the findings of point No.1, these points are redundant. Hence, I pass the following order :

ORDER

1. Criminal Revision Application No.67 of 2025 stands rejected.
2. In view of disposal of Criminal Revi. Application No.67 of 2025 the Criminal Misc. Application No.80 of 2025 disposed off accordingly.



Date : 16.10.2025.

Direct Typed on : 16.10.2025

Signed on : 18.10.2025

Printed on : 18.10.2025

**(KUNAL DHANAJI JADHAV)
ADDITIONAL SESSIONS JUDGE,
CR NO.87, CITY CIVIL AND SESSIONS
COURT AT MAZGAON,
GR. MUMBAI**

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”		
Upload Date	Upload Time	Mrs. Rupali S. Bhor Name of Stenographer
18.10.2025		
Name of the Judge (With C.R. No.)		HHJ SHRI K.D. JADHAV (COURT ROOM No.87)
Date of Pronouncement of JUDGEMENT / ORDER		16.10.2025
JUDGEMENT / ORDER signed by P.O. on		18.10.2025
JUDGEMENT / ORDER uploaded on		18.10.2025