

**Orders on Application under section 438(1) of Bharathiya
Nagarika Suraksha Sanhitha, 2023**

The Revision Petitioner has filed this application under section 438(1) of Bharathiya Nagarika Suraksha Sanhitha, 2023 praying to stay the further proceedings before the JMFC., VIII Court, Mangaluru in C.C.No.638/2017 pending disposal of the above petition.

In the application, the Petitioner submits that, the Petitioner No.1 as Company and Petitioner No.2 as Managing Director were tried as accused Nos.1 and 3 respectively in C.C.No.638/2017 in JMFC VIII Court, Mangalore under Section 138 of NI Act. After the closure of the prosecution evidence, the Petitioners filed their application for examination by way affidavit evidence. However, the same was rejected. Thereafter the Petitioner no.2 examined himself orally and obtained opinion of a handwriting expert for the purpose of evidence to show that the signature and handwriting on the

cheque does not belong to the accused but the same was forged, but the handwriting belongs to staff of the Complainant. The Petitioner No.2 then filed an application under Section 293 of Cr.P.C. and Section 45 of Indian Evidence Act. and prayed before the trial court to appoint a forensic expert and send the Cheque for forensic examination. The Petitioner No.2 also prayed before the Court to receive the handwriting verification report dated 13.12.2025 and 15.12.2025 in defence evidence.

Further the Petitioner No.2 submits that, the Complainant alleged that, the Accused issued signed Cheque for Rs.65,00,000/- on 01.11.2016 in favour of the Complainant. The Petitioner No.2 contended that, the signature found on the Cheque is not of the Petitioner No.2 and also the handwriting on the cheque is of the staff of the Complainant. The Petitioner No.2 in order to verify the same has obtained report from a handwriting verification expert Sri. Gaurav Kaushik, JK Consultancy, New Delhi. The signature found on the Cheque did not match with the sample signature of the Petitioner No.2 and the handwriting found on the Cheque matches with the handwriting of the staff of the Complainant; hence the misuse of the Cheque is quite evident. The Petitioner No.2 if not permitted to produce, he would put to irreparable loss. Hence, Petitioner No.2 prayed to allow the application.

The Counsel for the Complainant filed objections stating that the application is misconceived with the provisions of law and that the application is not maintainable. He further contended that the

application is filed to drag the proceedings and that the reports filed along with the application are fake, concocted documents and that since the Ex.P1 Cheque was in the Court, the expert will not have an opportunity to examine the handwriting found on Ex.P1/Cheque. The Complainant denied that the handwriting found on the Cheque is not of the Accused. The Complaint, misleadingly and in contravention of the pleadings on record, stated that the Accused had admitted the signature on the Cheque and hence, there is no merits in the application. Hence, prayed to dismiss the application.

The Learned Magistrate heard both sides and by the impugned order dated 23.01.2026 dismissed the application.

Being highly aggrieved by the above said order dated 23/1/2026 the petitioners have preferred a Revision Petition before this Hon'ble Court and the same may kindly be read as part of this application. The petitioners submit that they have got good and sufficient grounds to succeed in the Revision Petition preferred by them. The trial court has fixed the date on 19-02-2026 for arguments of the complainant's side and on that the day the learned Magistrate will proceed with the case and in such an event the petitioners will be put to great loss and hardship and the Revision Petition preferred by them will become infructuous if the further proceedings of the trial Court is not stayed by this Court. Hence prays to allow the application.

Heard. The learned counsel for the Petitioner has furnished the certified copy of the order in C.C.No.638/2017 dated 23-01-2026 passed by the JMFC VIII Court, Mangaluru.

I have carefully perused the impugned order passed by the JMFC., VIII Court, Mangaluru and the grounds urged by the Petitioner. It appears, there are sufficient material to consider the Petition on merits. If the stay is not granted, petition will become infructuous. Hence, I proceed to pass the following;

ORDER

Interim Application filed under section 438(1) of Bharathiya Nagarika Suraksha Sanhitha is hereby partly allowed.

Further proceedings in C.C.No.638/2017 passed by the JMFC VIII Court, Mangalore is stayed till the appearance of the respondent.

Issue Notice to respondent by 27-03-2026.

III Addl. District & Sessions Judge,
D.K., Mangaluru.