

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 7045 of 2025**

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MANSUKHBHAI NATVARLAL SUTHAR

Versus

SHAILESHBHAI DAHYABHAI PATEL & ANR.

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Appearance:

MR JEET B KARIA(11991) for the Applicant(s) No. 1

NOTICE SERVED for the Respondent(s) No. 1

MS CM SHAH, APP for the Respondent(s) No. 2

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CORAM:HONOURABLE MS. JUSTICE S.V. PINTO

Date : 29/04/2026

ORAL ORDER

1. Though served, the respondent no. 1 has not appeared either in person or through an advocate.

2. Rule. Learned APP waives service of notice of rule for the respondent no.2 – State.

3. By way of present application, the applicant – original complainant has prayed to quash and set aside the order dated 05.03.2025 passed by the learned Principal district and Sessions Judge, Anand in Criminal Misc. Application No. 995 of 2024 in Criminal Case No. 852 of 2019, which is pending in the Court of learned 2nd Additional Senior Civil Judge and

ACJM, Anand.

4. The present applicant – original complainant has filed Criminal Case No, 852 of 2019 against the respondent no. 1 – original accused for the offence punishable under Section 138 of the Negotiable Instruments Act. The case proceeded and the applicant was cross-examined and thereafter, the further statement of the respondent no.1. - accused was recorded. Thereafter, the respondent no. 1 – original accused filed Criminal Misc. Application No. 995 of 2024 for transferring the case from the Court of 2nd Additional Senior Civil Judge and ACJM, Anand to any other competent Court on the ground of bias of the Presiding Officer of that Court. The learned District & Sessions Judge, Anand, after hearing the parties, found that the allegations against the Presiding Officer are false; however, Criminal Case No. 852 of 2019 pending in the Court of the 2nd Additional Senior Civil Judge and ACJM, Anand was ordered to be transferred to the Court of Principal Senior Civil Judge and ACJM, Khambhat.

4.1. Being aggrieved and dissatisfied with the above referred order passed by the learned District and Sessions

Judge, Anand, the applicant – original complainant has filed the present application.

5. Learned advocate for the applicant submits that the impugned judgment and order is non-speaking and devoid of reasons, having been passed without considering the settled principles governing transfer of cases, including the convenience of parties. It is contended that the order is per-se illegal, as the transfer application was filed on 17.09.2024 under Sections 408 and 409 of the Criminal Procedure Code, which stood repealed upon the coming into force of the Bharatiya Nagarik Suraksha Sanhita, 2023 w.e.f. 01.07.2024; hence, the learned Judge ought to have dismissed the application with liberty to file afresh under Sections 448 and 449 of the BNSS, failing which, a jurisdictional error has occurred. It is further submitted that mandatory notice to the Public Prosecutor was not served and the learned Judge failed to consider that the Courts at Khambhat lack territorial jurisdiction under Section 142(2) of the Negotiable Instruments Act, as the transaction and dishonour of the cheque occurred within Anand. The transfer to a court lacking jurisdiction, despite availability of competent

courts at Anand, is stated to be erroneous. It is also contended that the grounds urged by the accused, such as age and inconvenience, were insufficient and mis-appreciated. Accordingly, the impugned order suffers from patent illegality, material irregularity, and erroneous assumption of jurisdiction, and is therefore unsustainable in law.

6. Learned APP Mr. Aditya Jadeja for the respondent no. 1 – submits that appropriate order may be passed.

7. Having considered the submissions advanced by the learned advocate for the applicant and the material on record, this Court is of the view that the impugned order dated 05.03.2025 passed by the learned Principal District and Sessions Judge, Anand is unsustainable in law, inasmuch as, despite recording that the allegations of bias against the Presiding Officer at Anand are unfounded, the case has been transferred without assigning cogent reasons and without due consideration of the settled principles governing transfer of criminal proceedings. Moreover, the transfer application having been filed under repealed provisions of the Criminal Procedure Code, without invoking the corresponding provisions of the

BNS, 2023, gives rise to a jurisdictional error, and the non-compliance with mandatory procedural requirements. Additionally, this Court finds substance in the contention that the Courts at Khambhat lack territorial jurisdiction in view of Section 142(2) of the Negotiable Instruments Act, particularly when the cause of action arose within Anand and competent Courts are available there, and therefore, the transfer to a Court not vested with jurisdiction is legally untenable. Consequently, the impugned order is quashed and set aside, and Criminal Case No. 852 of 2019 is directed to be listed before the Court of the Chief Judicial Magistrate, Anand for disposal in accordance with law.

8. In view of the above, the present application stands disposed of.

F.S. KAZI

(S. V. PINTO,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: KAZI FARUKHUSEN(HC01075), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 04/05/2026 17:34:42