

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 27430 of 2025**

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KISHORBHAI JAGJIVANBHAI DAVE

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR RAJESH O GIDIYA(5222) for the Applicant(s) No. 1

MR CHINTAN DAVE, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI****Date : 24/12/2025****ORAL ORDER**

1. Draft amendment is allowed.
2. In a petition filed under section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner is seeking quashment of Criminal Case No.64 of 2025 pending before the Court of learned 2nd Additional Chief Judicial Magistrate and Special Court (NI), Bhavnagar, which has issued process under section 138 of Negotiable Instrument Act. Hence, present petition.
3. Learned advocate Mr.Gidiya for the petitioner submits that cheque in question has not been signed by the petitioner, it is signed by Mr.Vijaykumar Hakabhai Algotar from his personal account in favour of the complainant. Said cheque has been returned unpaid. The complainant has joined petitioner as accused in Criminal Case on the ground that complainant has invested in Shreiya Heights and purchased office no.704,705 and 706 proposed to be developed by accused as well as present petitioner. Some oral agreement took place

between the parties and under this transaction, cheque in question was issued. Learned advocate Mr.Gidiya submits that such averments in the complaint along with examination in chief on affidavit by complainant could be good pleadings in civil suit but proceedings underway is in regards offence under section 138 of NI Act being clear criminal case raising criminal liability, the Court was required to confine to provisions of section 138 of NI Act by issuing process. Reiterating his submission, learned advocate Mr.Gidiya submits that petitioner is not signatory to the cheque nor any transaction took place with the petitioner in regards to cheque in dispute. Issuance of process against the petitioner, therefore, is bad in law. Therefore, it is submitted to admit this matter.

4. Having noted cryptic order passed by learned 2nd Additional Chief Judicial Magistrate and Special Court (NI), Bhavnagar to issue process, prima facie it appears that learned Trial Court has issued process to the petitioner without application of mind. The petitioner since is not signatory to the cheque and cheque in question has been issued from the personal account of Mr.Vijaybhai Hakabhai Algotar as well as promissory note issued by Mr.Vijaybhai Hakabhai Algotar on 20.10.2024 contain endorsement of issuing 5 cheques including questioned cheque, the petitioner is no way connected with criminal liability proposed in Criminal Case.

5. In view of above, **Rule**. Learned APP waives service of rule on behalf of respondent – State. Further proceedings of Criminal Case No.64 of 2025 pending before the Court of learned 2nd Additional Chief Judicial Magistrate and Special Court (NI),

Bhavnagar against the petitioner – Kishorbhai Jagjivanbhai Dave is hereby stayed.

6. It is clarified that learned Trial Court concerned may proceed in Criminal Case against accused – Vijaybhai Hakabhai Algotar.

SATISH

(J. C. DOSHI,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SATISH CHANDRAMOHAN VEMULLA(HC00206), Principal Pvt Secretary, at High Court of Gujarat on 24/12/2025 17:15:45