IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 161 of 2026
Reserved on: 24.03.2026
Date of Decision: 06.05.2026

Pawan Kumar **.... Petitioner**

Versus

Kapil Dev **.... Respondent**

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *No.*

For the petitioner : Mr Surender K. Sharma, Advocate.

For the Respondent : Nemo

Rakesh Kainthla, Judge

The present revision is directed against the order dated 21.01.2026, passed by the learned Additional Chief Judicial Magistrate, Dehra, District Kangra, H.P. (*learned Trial Court*), vide which the application filed by the petitioner (*accused before the learned Trial Court*) for sending the cheque

[1]. Whether reporters of the local papers may be allowed to see the judgment? Yes

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for comparison was dismissed. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). The accused filed an application for comparison of his signatures, asserting that the accused had never signed the cheque or written its contents. The complainant had got it signed and got it written by someone. The signatures of the accused and the contents of the cheque are required to be compared to determine whether they are in the handwriting of the accused or not.

3. The application was opposed by the complainant, asserting that the cheque was handed over by the accused to the complainant. The application was filed for delaying the trial; hence, it was prayed that it be dismissed.

4. Learned Trial Court held that the signatures/handwriting can be compared with the admitted signatures/handwriting. The accused did not produce any

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admitted handwriting/signatures to enable the comparison. The complainant had specifically stated that the cheque was handed over to him by the accused in his shop, in the presence of his father. The accused had an efficacious remedy of examining his father. There was no necessity to send the cheque for comparison at this stage; hence, the application was dismissed.

5. Being aggrieved by the order passed by the learned Trial Court, the accused has filed the present revision asserting that the learned trial Court erred in dismissing the application. The accused had not issued the cheque. He had not signed it. The complainant got the cheque signed by someone. The signatures are required to be compared to establish the defence taken by the accused. Therefore, it was prayed that the present revision be allowed and the order passed by the learned trial Court be set aside.

6. Mr Surinder K. Sharma, learned counsel for the petitioner/accused, submitted that the learned trial Court erred in dismissing the application. The accused had specifically taken a defence that the cheque was not signed by him, and he was entitled to prove the defence taken by him.

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The dismissal of the application has prejudiced him; hence, he prayed that the present revision be allowed and the order passed by the learned trial Court be set aside.

7. I have given a considerable thought to the submissions made by learned counsel for the petitioner/accused at the bar and have gone through the records carefully.

8. The accused has filed a revision dismissing the application for sending the cheque for comparison. It was held by this court in ***Vishwa Narayan Goswami Vs. Ram Rattan Sharma, latest HLJ 2009(1) 552,*** that an order dismissing an application for leading additional evidence is an interlocutory order, which is not amenable to the revisional jurisdiction. It was observed: -

> "7. The first question staring at the face is whether the order passed under Section 311 of the Code of Criminal Procedure by the learned trial Magistrate is an "interlocutory order" and not amenable to the revisional jurisdiction. My answer to it is in affirmative. The order passed by the court under Section 311 Cr.P.C. is an "interlocutory order" and revision against it is barred under Section 397(2) of the Code of Criminal Procedure.
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> 8. In fact, the word "interlocutory order" has not been defined in the Code. However, in ***Amar Nath's case 1978 SCC (Cri)10***, the Supreme Court held that the word

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"interlocutory order" in Section 397(2) of the Code has been used in a restricted sense and not in a broad or artistic sense and it merely denotes orders of purely interim or temporary nature which do not decide or touch the important rights of the parties but any order which substantially affects the right of the parties cannot be said to be an "interlocutory order".

9. In ***Madhu Limaye's case, 1980 SCC (Cri)695***, a three-judge Bench of the Supreme Court held that an order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, cannot be held to be an "interlocutory order".

10. Further in ***Rajendra Kumar Sita Ram Pande vs. Uttam and another 1999(3) SCC 134***, the apex court took note of the above proposition of law and held that, the above being the position of law, if the order is not purely interlocutory but intermediate or quasi-final, the powers of the High Court would be attracted.

11. Yet in another case ***K.K. Patel vs. State of Gujarat (2000)6 SCC 195***, while relying upon Rajendra Kumar Sita Ram Pande's case supra, held that it is well neigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage, the feasible test is whether upholding the objections raised by a party, it would result in culminating the proceedings if so any order passed on such objection would not be merely interlocutory in nature as envisaged under Section 397(2) of the Code.

12. In the present case, the order passed on the application under Section 311 Cr.P.C. by the learned trial court is neither an intermediate nor a quasi-final order and further the proceedings in the main case against the accused petitioner would not culminate even on acceding to the request of the respondent, therefore the order impugned in revision petition by the accused

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> before the learned Sessions Judge is an "interlocutory order" and was not amenable to his revisional jurisdiction.

9. It was held by the Hon'ble Supreme Court of India in ***Sethuraman vs Ratamanickam (2009) 5 SCC 153,*** that an order refusing to call the documents and lead additional evidence is interlocutory. It was observed: -

> "5. Secondly, what was not realised was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., were interlocutory order and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C. The Trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent/accused, and the only defence that was raised was that his signed cheques were lost and that the appellant/complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e., one on the application under Section 91 Cr.P.C. for production of documents and the other on the application under Section 311 Cr.P.C. for recalling the witness, were orders of an interlocutory nature, in which case, under Section 397(2), the revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed."

10. This judgment was followed by the Andhra Pradesh High Court in ***M. Koteswara Reddy v. State of A.P., 2019 SCC***

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OnLine AP 318, and it was held that an application under Section 391 of Cr.P.C. is interlocutory and no revision lies against an order dismissing such an application. It was observed: -

> "**7.** Now, it is well-settled law that an order summoning a witness under Section 391 Cr. P.C., or the summoning of documents under Section 91 Cr. P.C., etc., are all pure and simple interlocutory orders. On the same analogy, the petitioner filed under Section 391 Cr. P.C. in the appellate Court also to summon a witness, even for further cross-examination, is also a pure and simple interlocutory order. Section 397(2) Cr. P.C. imposes a clear bar to exercise the power of revision under Section 397(1) Cr. P.C. in respect of interlocutory orders.
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> xxx
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> 9. In view of the dictum laid down in the aforesaid judgment of the Apex Court that revision filed under Section 397 (1) Cr.P.C. against an interlocutory order is not maintainable in view of the bar engrafted under Section 397 (2) Cr.P.C., this revision, which is preferred against an interlocutory order passed under Section 391 Cr.P.C., to recall PW.1 for cross-examination, is also not maintainable."

11. Delhi High Court also took a similar view in ***Mohd. Hasan v. State, 2023 SCC OnLine Del 5469*** and held:

> **11.** It is trite law that an order passed under Section 311 Cr. P.C. is purely an interlocutory order and a revision against an interlocutory order is clearly barred under Section 397(2) Cr. P.C. Therefore, the present revision petition filed against the order dated 31.03.2023 passed by the Ld. ASJ dismissed the

> application under Section 311 Cr. P.C. is thus not maintainable.

12. Learned Trial Court held that the accused had handed over the cheque in the presence of his father, as per the complainant, and the accused could have examined his father to disprove this assertion. It is undisputed that the accused has not examined his father to disprove the statement made by the complainant. The accused claimed that he had not signed the cheque, but had not provided any satisfactory explanation as to how the complainant came into possession of the cheque. He claimed that he had lost the cheque. But, he had not made any complaint regarding the loss of the cheque to the police or the bank. It was laid down by this Court in ***Tajinder Singh v. Anil Nayyar, 2017 SCC OnLine HP 2145,*** that when the complaint of loss of a cheque was made after one year of the loss, the application for comparison cannot be allowed. It was observed:

> **"15.** Though this Court, after having carefully perused aforesaid provisions of law finds no force in the arguments of Mr. Chandel, learned counsel representing the petitioner, that court below ought to have sent the handwriting of petitioner as well as complainant to the hand writing expert in view of defence taken by the petitioner as well as candid admission made by complainant in his cross-examination, but, even if aforesaid prayer, for the sake

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> of argument, is accepted, this Court has no hesitation to conclude that the learned Court below rightly has not acceded to the request of the petitioner for sending admitted/specimen handwriting of the accused and the complainant with the handwriting on the disputed instrument to the handwriting expert, keeping in view the conduct of the petitioner, who admittedly took no steps for almost one year to lodge complaint, if any, against the complainant for having removed signed cheques unauthorisedly from his drawer. In the case at hand, it is quite apparent that the aforesaid notice dated 30.11.2015 was duly received by the petitioner vide Ext. CW-1/D, which fact has been further acknowledged by him in his statement recorded under Section 313 CrPC, meaning thereby the petitioner was fully aware of the fact that the cheque bearing No. 393674 dated 2.10.2015 had been presented in the bank concerned against account No. 99228100080011."

13. It was submitted that the signatures and the body of the cheque are in different pens, which corroborates the version of the accused that he had not written and signed the cheque. This submission will not help the accused. It was laid down by the Hon'ble Supreme Court in ***Oriental Bank of Commerce vs Prabodh Kumar Tiwari, 2022 SCC OnLine SC 1089,*** that merely because the body of the cheque was written by some other person will not invalidate the cheque. It was observed: -

> "**18.** For such a determination, the fact that the details in the cheque have been filled up not by the drawer, but by some other person would be immaterial. The presumption which arises on the signing of the cheque

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> cannot be rebutted merely by the report of a handwriting expert. Even if the details in the cheque have not been filled up by the drawer but by another person, this is not relevant to the defence whether the cheque was issued towards payment of a debt or in the discharge of a liability."

14. Therefore, even if the body was in the handwriting of some other person, it would not invalidate the cheque, and no fruitful purpose would be served by the comparison of the handwriting/signatures on the cheque.

15. Even otherwise, the application was premature. The accused could have examined his father and established that he had not handed over the cheque to the complainant as claimed by him. He could have examined the witnesses to prove that he had lost the cheque-book, and then sought the comparison of the signatures. In the absence of any supporting materials, the learned trial court was justified in dismissing the application at this stage.

16. Learned Trial Court had rightly pointed out that the accused had not mentioned the admitted handwriting with which the comparison was made. Therefore, the learned Trial Court was justified in dismissing the application.

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17. Therefore, there is no reason to justify the exercise of extraordinary jurisdiction vested with this Court under section 528 of the BNSS; hence, the present revision fails, and it is dismissed, so also the pending applications, if any.

18. The observation made herein before shall remain confined to the disposal of the revision and will have no bearing whatsoever on the merits of the main case.

(Rakesh Kainthla)
Judge

6th May, 2026.
(ravinder)