



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1295 OF 2025

Kantilal s/o Shantilal Surana,
Age : 67 Years, Occu : Business,
R/o. Karva Nagar, Plot No.13,
Pahila Majala, Jalna, Tq. & Dist. Jalna.

...PETITIONER
(Orig. Complainant)

VERSUS

Bhushan s/o Sakharchand Kankariya
Age : 51 Years, Occu: Property Dealer
and Builder, R/o. Shalaka Opas Salisabri Park,
Tultekadi Pune – 411 037
District Pune

...RESPONDENT
(Orig. Accused)

Mr. Palod Lalitkumar Bansilal, Advocate for the Petitioner.
Mr. Radikar Akshay Suresh, Advocate for the Respondent.

CORAM : ABHAY J. MANTRI, J.
DATE : DECEMBER 10, 2025

JUDGMENT :

1. Heard. **Rule.** Rule is made returnable forthwith and heard finally, with the consent of learned counsel for the parties at the admission stage.

2. The petitioner-original complainant is assailing the order dated 14th July 2025 passed below Exhibit 125 by the learned 4th Judicial Magistrate First Class, in SCC No.976 of 2019, whereby allowed the application for sending the cheque bearing No. 000008 (for short "*cheque*")

dated 03rd May 2019, Exhibit 29 to the Handwriting Expert for examination of handwriting and signature thereon.

3. Mr. Palod, learned counsel for the petitioner, vehemently contended that earlier the respondent–accused had made an application for sending the cheque to the Handwriting Expert, which the learned Magistrate rejected on 13th April 2023. Therefore, the question of moving a second application for the same relief does not arise. Secondly, he submitted that the cheque was returned for “*insufficient funds*” and not on the ground of any discrepancy in the drawer's signature; hence, there is no question to refer it to the Handwriting Expert. He further argued that although a notice was issued to the respondent–accused, the respondent did not reply by denying the issuance of the cheque or the signature thereon. Therefore, according to him, the respondent is not entitled to have the cheque sent to the Handwriting Expert.

4. The learned counsel for the petitioner further submitted that on 03rd August 2021, during the pendency of the proceedings, a Memorandum of Understanding (for short “*MoU*”) was executed between the petitioner and the respondent, wherein the respondent admitted issuance of the cheque in question to the petitioner. In the said MoU, the respondent did not dispute his own handwriting or the signature on the cheque and, in fact, agreed to repay the amount to the petitioner in accordance with the schedule mentioned therein. Therefore, he submitted that the respondent is

not entitled to have the relief to send a cheque to the Handwriting Expert. However, the learned Magistrate erred in observing that the earlier application was rejected purely on procedural grounds and not on merits, and on that basis, in order to give a fair opportunity to the respondent, erroneously allowed the present application.

5. To buttress his submissions, the learned counsel for the petitioner has relied upon the judgments of the Hon'ble Apex Court in *Manorama Naik Vs. The State of Odisha & Anr.*, and *Ajitsinh Chehuji Rathod Vs. State of Gujarat & Anr.*, and submitted that, in view of the mandate laid down in the said judgments, the petition deserves to be allowed.

6. On the other hand, Mr. Radikar, learned counsel appearing for the respondent, vehemently opposed the petition on the ground that the order passed by the learned Magistrate is just and proper and no interference is required. By passing the impugned order, the learned Magistrate has afforded a fair opportunity to the respondent to adduce his evidence. Therefore, there is no necessity to interfere with the same. He further argued that there is no reason to deprive the respondent of an opportunity to lead evidence and, as reflected in paragraph No. 8 of the impugned order, the learned Magistrate has rightly recorded reasons for granting such an opportunity. Granting the respondent this opportunity would not prejudice the petitioner's rights; instead, it would enable the matter to be decided on the merits.

7. In support of his submissions, the learned counsel for the respondent relied upon the judgment of the Hon'ble Apex Court in *Mrs. Kalyani Baskar Vs. Mrs. M. S. Sampooranam*, and referred to the concluding paragraph of the said judgment. He submitted that, in view of the observations made therein, no interference with the impugned order is warranted. Hence, he urged that the petition be dismissed.

8. It is pertinent to note that, upon a query put to the learned counsel for the respondent, he fairly submitted that the respondent did not reply to the notice served upon him. Similarly, the respondent has not challenged the order dated 13th April 2023, passed below Exhibit 61.

9. On perusal of the record, at the outset, it appears that the respondent had earlier filed an application (Exhibit 61) before the learned Magistrate seeking to send the disputed cheque to a Handwriting Expert. The said application was rejected on 13th April 2023, and the respondent did not challenge the said order before the superior Court. The failure to challenge the said order indicates that it has attained finality.

10. Furthermore, as per the law laid down in *Adalat Prasad Vs. Rooplal Jindal & Ors. (2004) 7 SCC 338*; the Court is not empowered to recall its own order, even if such an order is erroneous. On this ground alone, in my view, the application at Exhibit 125 ought to have been rejected by the learned Magistrate at the threshold, as a second application is not maintainable and the learned Magistrate is not empowered to recall his own

earlier order in view of the said judgment.

11. In addition, it has been brought to the notice of this Court that the cheque was returned for the reason of “*insufficient funds*” and not due to “*discrepancy in signature*”, which could have warranted sending it to a Handwriting Expert. Moreover, the petitioner, by adducing evidence, has proved the Memorandum of Understanding MoU dated 03rd August 2021 (Exhibit 36). A bare perusal of the said MoU indicates that the respondent and the petitioner had entered into an agreement wherein the respondent categorically admitted that he had received an advance amount of ₹26,00,000/- from the petitioner, and towards the discharge of the said liability he had issued the two cheques in question dated 03rd May 2019 for an amount of ₹20,25,000/- and ₹ 3,74,350/- respectively.

12. Paragraph No.1 of the MoU categorically records that proceedings under Section 138 of the N.I. Act, bearing Nos. 976 of 2019 and 1020 of 2019 are pending between the parties, and they had compromised the said matter in the presence of their relatives. It is further stated in the MoU that upon receipt of the entire cheque amount, the MoU would stand cancelled, and a repayment schedule is annexed to the said compromise deed indicating the manner in which the respondent agreed to repay the amount. The MoU, therefore, clearly demonstrates that the respondent did not dispute the issuance of the cheques or his signatures and handwriting thereon, and, in fact, admitted his liability to repay the cheque amounts to

the petitioner.

13. It is not in dispute that the respondent has a right to rebut the presumption; however, that does not mean that once his application for sending the cheques for examination to the Handwriting Expert was rejected, he is entitled to file a second application seeking the same relief. However, the remedy lies in adducing independent evidence to rebut the statutory presumption contemplated under Sections 118 and 139 of the Negotiable Instruments Act.

14. On perusal of the bank memo (Exhibit 31), it emerges that the reason for dishonour of the cheques is stated as “*funds insufficient*”. It is not the defence of the accused that the cheques were dishonoured on the ground that the drawer’s signature was dissimilar from the specimen signature recorded with the bank. *Likewise*, the respondent did not reply to the statutory notice. These two documents lead to an adverse inference that the respondent had no grievance regarding the issuance of the cheques to the petitioner, and that the cheques were dishonoured for the stated reason of “*funds insufficient*,” as well as to attract the presumption that the cheques were issued solely to discharge the liability.

15. In paragraphs Nos. 4 to 8, the learned Magistrate has observed that the accused has consistently denied the handwriting and signatures on the cheques, and that the earlier application was rejected purely on procedural grounds; therefore, with a view to giving an opportunity to the

accused, the impugned order came to be passed. However, the learned Magistrate failed to consider that he was not empowered to recall his own order passed below Exhibit 61, in view of the mandate laid down in *Adalat Prasad (supra)*.

16. Similarly, the learned Magistrate did not consider the evidence on record, namely, the bank memo (Exhibit 31) and the MoU (Exhibit 36), in its proper perspective. The bank memo clearly indicates that the cheque was returned for “*insufficient funds*” and not on the grounds of a difference in signature. Furthermore, by executing the MoU with the petitioner, the respondent admitted his liability to repay the amount, as well as the issuance of the cheques and the pendency of the proceedings. The said agreement is exhibited, and nothing has been brought on record by the respondent to demonstrate that the document is not genuine so as to discard it. Despite this, the learned Magistrate allowed the application solely on the ground of affording the accused–respondent a fair opportunity. The findings recorded by the learned Magistrate are, therefore, improper, perverse and contrary to the law laid down in *Adalat Prasad (supra)*, as well as the settled position of law. Hence, the said findings cannot be sustained in the eyes of the law.

17. Perused the judgment in *Mrs. Kalyani Baskar (supra)*. It is evident that, in that case, the accused examined the bank witness, who deposed that he did not verify the said signature before returning the cheque; therefore,

the cheque was sent to the Handwriting Expert. However, in the present case, it is undisputed that the respondent has not examined any bank witness to support his defence. Consequently, the observations made in *Mrs. Kalyani Baskar (supra)* are hardly of any assistance to the respondent. On the contrary, the law laid down in *Manorama Naik (supra)* and *Ajitsinh Chehuji Rathod (supra)* is applicable in the present case.

18. To sum up the above discussion, it emerges that despite the rejection of the earlier application (Exhibit 61), the respondent neither challenged that order before the Appropriate Forum nor acted in accordance with the law, but instead filed a subsequent application in apparent contravention of the law laid down in *Adalat Prasad (supra)*, thereby abusing the process of law. The very act of filing such an application, despite having agreed under the MoU to repay the amount, indicates that the respondent failed to honour his commitment and attempted to protract the proceedings before the learned Magistrate. Therefore, in my view, the respondent is liable to be saddled with costs for abuse of the process of the law.

19. As a result, the petition is allowed. The order dated 14th July 2025 passed below Exhibit 125 by the learned 4th Judicial Magistrate First Class, in SCC No.976 of 2019, is hereby set aside. The application filed by the respondent below Exhibit 125, is rejected with costs of ₹ 10,000/- payable to the respondent. However, at this stage, learned counsel for the respondent submitted that the respondent has already deposited ₹ 5,000/-

towards the fee for sending the documents to the Handwriting Expert and requested that the said amount be treated as a cost. It is also noted that, due to the filing of the said application, the petitioner was compelled to approach this Court to challenge the impugned order.

20. Having considered the said submission, the cost of ₹ 5,000/- deposited towards the Handwriting Expert's fees by the respondent before the learned Magistrate, shall be treated as a cost to be paid to the respondent.

21. Rule is made absolute in the above terms.

22. The writ petition is disposed of accordingly.

(ABHAY J. MANTRI, J.)