HIGH COURT OF JAMMU, KASHMIR AND LADAKH
AT JAMMU

Reserved on 13.10.2026
Pronounced on 22.10.2026
Uploaded on 22.10.2026
Whether the operative part
or full Judgment is pronounced: **Full**

CRM(M) No. 1058/2025

Bansi Lal Bhardwaj …..Appellant(s)/Petitioner(s)

Through: Mr. Rohit Sharma, Adv.

Vs

S. Gagandeep Singh ….. Respondent(s)

Through: Mr. Himanshu Beotra, Adv.

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The present petition has been filed by the petitioner under section 528 of the Bharatiya Nagrik Suraksha Sanhita(BNSS), 2023 seeking quashment of order dated 16.11.2024 passed by the learned 3rd Additional Sessions Judge, Jammu (hereinafter to be referred as the revisional court) as also order dated 11.09.2023 passed by the Judicial Magistrate 1st Class (City Judge), Jammu (hereinafter to be referred as the trial Magistrate).

2. Vide order dated 11.09.2023 passed by the learned trial Magistrate, the application of the petitioner/accused for summoning of defence witnesses except to the extent of three witnesses, has been rejected. The said order has been upheld by the learned revisional court in terms of order impugned dated 16.11.2024.

Rakesh Kumar
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I attest to the accuracy and
integrity of this document

3. I have heard learned counsel for the parties and perused the record.

4. It appears that the respondent/complainant has filed a complaint against the petitioner under section 138 of the Negotiable Instruments Act in respect of cheque dated 20.09.2009 for an amount of ₹10,00,000/- drawn on Jammu Rural Bank, Bohri Patta Jammu. It appears that the respondent/complainant has concluded his evidence and on 20.04.2019, the statement of the petitioner/accused under section 342 J&KCr.P.C. was recorded. While making his statement, the petitioner/accused has opted to enter his defence by leading evidence to prove his defence that he did not owe any money to the respondent/complainant.

5. It was stated by the petitioner/accused, in his statement under section 342 J&KCr.P.C. that the complainant is a property dealer and at his instance, he had persuaded his friends and relatives to sell their lands. He has further stated that the respondent/complainant sold about 30 kanals of land to his clients after purchasing the same from his friends and relatives, regarding which sale deeds were executed. That he is a witness to these sale deeds. He has further stated that when his friends and relatives came to know that the complainant had purchased the land from them at the rate of ₹1.46 lacs per kanal and sold it at the rate of ₹2.30 lacs per kanal, one of his relatives, Sh. Sham Lal refused to sell his land. He has further stated that the complainant went to the house of Sh. Sham Lal a number of times, whereafter, it was decided that the complainant would get back the land from his clients and that he would pay the money back to them at the rate of ₹3.00 lacs per kanal. In this regard, a settlement was arrived at between

the parties and in terms of the said settlement, six cheques were issued by the petitioner/accused but the complainant did not adhere to the terms of the settlement and he refused to give back the land.

6. In order to prove his aforesaid defense, the petitioner/accused furnished a list of 19 witnesses and deposited their diet expenses. Most of these witnesses were sought to be produced to prove the alleged sale transactions. Learned trial court vide impugned order dated 11.09.2023, while allowing the petitioner/accused to record statements of two witnesses, who had already been examined, also permitted him to examine one out of witness Nos. 18 and 19. Besides this, witness No. 17, Record Keeper, Income Tax Department was also permitted to be examined. The application to the extent of other witnesses was disallowed on the ground that the petitioner/accused has furnished a long list of witnesses, just to protract the proceedings. The said order has been upheld by the learned revisional court vide impugned order dated 16.11.2024.

7. The petitioner/accused has challenged both the impugned orders on the grounds that if he is not allowed to examine his witnesses in defense, it would amount to infringing his right to a fair trial. It has been submitted that truncating the list of witnesses would cause prejudice to the defense of the petitioner.

8. I have heard learned counsel for the parties and perused the record of the case.

9. At the very inception, it is to be noted that the impugned order passed by the learned trial Magistrate was challenged by the petitioner by way of a

revision petition and now the present petition under section 528 BNSS has been filed to challenge the aforesaid two orders, which appears to be a second revision petition under the garb of invoking inherent powers of this Court. Sub section (3) of section 438 of the BNSS, which vests revisional power with the Sessions Judge and the High Court, provides that if an application under the said provision has been made by any person either to the High Court or to the Sessions Judge, no further application by same person can be entertained by either of them, meaning thereby that a second revision petition against an order passed by inferior criminal court is not maintainable.

10. The petitioner/accused by filing the present petition under section 528 of the BNSS is, in effect, invoking the revisional powers of this Court after having failed in his attempt before the revisional court. In view of the provisions contained in sub section (3) of section 438 of the BNSS, the present petition is not maintainable. It is true that the High Court is vested with inherent powers under section 528 of BNSS to prevent abuse of process of court or to secure the ends of justice, but the said power cannot be used to circumvent a bar contained under any other provision of the Sanhita. On this ground alone, the present petition is not maintainable.

11. Apart from the above, the present petition has been filed belatedly without explaining the reasons for the delay. The impugned order has been passed by the learned revisional court on 16.11.2024, whereas the present petition has been filed on 15.10.2025, which is after about eleven months of the passing of the impugned revisional order. Even though there is no period of

limitation prescribed within which a petition under section 528 of the BNSS ought to be filed, yet if a petitioner fails to address convincingly the reasons for *laches* and inordinate delay, the Court would not exercise its jurisdiction under section 528 of the BNSS as such, the petition should be filed within a reasonable time so that the progress of the case is not disturbed at the belated stage. A revision petition challenging an order can be filed within 90 days from the date of order and on that analogy, a period of 90 days should be treated as a reasonable time to file a petition under section 528 of the BNSS and if it is filed beyond the period of 90 days, the petitioner would have to explain the cause of delay. In this regard, I am supported by the judgment of this Court in **Eapen Chakoo vs. Union Territory of J&K[CRM(M) No. 78/2020, decided on 05.07.2022].**

12. In the present case, the petitioner has not furnished any reason much less a plausible reason for approaching this Court after a period of eleven months of passing of impugned order by the revisional court. Therefore, this Court would refuse to entertain the present petition on the ground of delay and *laches*.

13. Even on merits, the petitioner/accused does not have a case. As already stated, the petitioner seeks to prove his defence that there were transactions with regard to the sale/purchase of land entered into by the respondent/complainant with some friends and relatives of the petitioner/accused. These transactions can be proved by the petitioner/accused by placing on record original or certified true copies of the sale deeds. An accused is not required to prove his defense beyond

reasonable doubt. He has only to probablise his defense. Therefore, it is not necessary for the petitioner/accused to produce the executants of the sale deeds or their marginal witnesses as witnesses to prove his defense. The petitioner/accused can prove his defence by producing either the original sale deeds or the certified true copies thereof. There is no necessity for the petitioner to produce rest of the witnesses listed by him in his application. The learned trial court is, therefore, right in truncating the said list and confining it to only those witnesses which are essential for proving the defense of the petitioner/accused.

14. For all what has been said, analysed and discussed hereinabove, I do not find any merit in this petition. Accordingly, the same is dismissed.

(SANJAY DHAR)
JUDGE

Jammu
22.10.2026
Rakesh PS

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No