IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.269 of 2026

Mahendra Kumar Agarwalla @ Mahendra Kumar Agarwal, Aged about 67 years, son of Prayag Lal Agarwala, Resident of Mohalla Shivpuri, Bhuiphore, Opposite Annpurna Shop, P.O. K.G. Ashram, P.S. Saraidhela, District Dhanbad (Jharkhand) … Petitioner

Versus

1. The State of Jharkhand

2. Pawan Kumar Paswan, Aged about 36 years, Son of Late Laddu Ram, Resident of New Colony, Jagjiwan Nagar, Saraidhela, Near Durga Mandap, P.O. and P.S. Saraidhela, District Dhanbad

… Opposite Parties

For the Petitioner : Mr. P. K. Mukhopadhyay, Advocate
For the State : Ms. Shweta Singh, Addl.P.P.
For the O.P. No.2 : Mr. Pratyush, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- **I.A. No.12548 of 2026**

Heard the parties.

Learned counsel for the petitioner submits that this interlocutory application has been filed for early hearing of this Cr.M.P.

Since, the hearing of this Cr.M.P. is taken up today, hence, this interlocutory application stands disposed of being infructuous.

(Anil Kumar Choudhary, J.)

Cr.M.P. No.269 of 2026

This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of the Bharatiya Nagarik

Suraksha Sanhita, 2023 with the prayer to quash the order dated 24.09.2025 passed by the learned Additional Sessions Judge-I, Dhanbad in Criminal Revision No.214 of 2023 whereby and where under the learned Additional Sessions Judge-I, Dhanbad dismissed the Criminal Revision and affirmed the order dated 21.08.2023 passed by the learned Judicial Magistrate-1st Clas, Dhanbad in Complaint Case No.6061 of 2022 by which the learned Judicial Magistrate-1st Class, Dhanbad has rejected the petition dated 13.07.2023 filed under Section 45 of the Indian Evidence Act for sending the Exhibit C-2/CW-1 i.e., the agreement dated 01.06.2021 executed by the petitioner inter alia being the complainant of the case; to the Handwriting Expert, i.e. F.S.L., Ranchi to verify the signature of the petitioner in the Agreement for sale dated 01.06.2021.

2. The brief fact of the case is that the petitioner is an accused of Complaint Case No.6061 of 2022 of the court of learned Judicial Magistrate-1st Class, Dhanbad involving the offence punishable under Section 138 of N.I. Act. The complainant of the said case examined himself as C.W.-1. He proved the agreement for sale entered into between the petitioner as the seller and the complainant himself along with two persons namely Raju Kumar Singh and Anjani Kumar Singh together as purchasers and the case of the complainant is that the cheque in question which was dishonoured, was issued by the petitioner herein, who is the accused person of the said case, in discharge of his debt towards the return of the advance amount he has taken in terms of the said agreement. It is the undisputed fact that

though the C.W.-1 was cross-examined at length, the petitioner who was the accused person of the said case, did not chose to challenge the portion of the testimony in the examination-in-chief filed in shape of affidavit to the effect that it is the petitioner who is the signatory of the said agreement as the seller; as neither any question in that respect has been put to the C.W.-1 nor any suggestion that the signature of the petitioner does not appear on the agreement, was given to the C.W.-1. In the statement recorded under Section 311 of the Cr.P.C. of the petitioner, the petitioner has also not taken any plea that his signature is not appearing in the said agreement which has been marked as Exhibit C-2/CW-1.

3. When the case was fixed for defence evidence, the petitioner, on 13.07.2023 filed a petition and claimed that he has never put his signature on Exhibit C-2/CW-1 at any point of time and the purported signature of the petitioner appearing in the said Exhibit is a forged one, prepared by the complainant and made a prayer for sending the Exhibit C-2/CW-1 along with the cheque which has been marked as Exhibit C-3/CW-1. Though in the prayer portion of the said petition, it has not been mentioned as to where the document is to be sent but at the beginning of the petition the nomenclature of the petition has been mentioned "petition for sending documents- Exhibit C-2/CW-1 i.e., the agreement dated 01.06.2021 to the F.S.L., Ranchi."

4. The learned Judicial Magistrate-1st Class, Dhanbad vide order dated 21.08.2023 passed in Complaint Petition No.6061 of 2022 considered that the petitioner who is the accused person of the case, has

not denied his signature either on the cheque or in the agreement which are respectively the Exhibits C-3/CW-1 and C-2/CW-1 and in his statement recorded under Section 313 of Cr.P.C., the accused-petitioner has put his full signature. The learned Judicial Magistrate-1st Class, Dhanbad relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Bir Singh vs. Mukesh Kumar** reported in **(2019) 4 SCC 197** wherein the Hon'ble Supreme Court of India has held that a presumption arises that the cheque, duly signed and voluntarily made over to the payee, was made in discharge of debt or liability irrespective of whether the cheque was post-dated or blank cheque for filling by payer or any other person. Hence, the learned Magistrate was of the opinion that there was no requirement to seek the opinion of the handwriting expert of the F.S.L., Ranchi and dismissed the prayer.

5. The petitioner filed Criminal Revision No.214 of 2023 against the said order dated 21.08.2023 passed by the learned Judicial Magistrate-1st Class, Dhanbad in Complaint Petition No.6061 of 2022. The learned Additional Sessions Judge-I, Dhanbad vide judgment dated 24.09.2025 dismissed the Criminal Revision. The learned Additional Sessions Judge considered that the complainant who was examined as C.W-1, has proved the agreement which has been marked as Exhibit C-2/CW-1. The learned Additional Sessions Judge also considered that the petitioner, in his statement recorded under Section 313 of Cr.P.C., has not questioned his signature on the agreement marked as Exhibit C-2/CW-1. The learned Additional Sessions Judge also considered that the signature of the petitioner in the cheque concerned which has been

marked as Exhibit C-3/CW-1 is not in dispute. In the bare eyes, the admitted signature of the petitioner appearing in his statement under Section 313 of Cr.P.C. appears to be similar to that of his agreement in Exhibit C-2/CW-1. The learned Additional Sessions Judge also considered the statutory presumption as envisaged under Section 139 of the N.I. Act and formed an opinion that the petition filed by the petitioner, was fit to be rejected and dismissed the Criminal Revision.

6. Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Kalyani Baskar (Mrs.) vs. M. S. Sampoornam (Mrs.)** reported in **(2007) 2 SCC 258** and submits that in para-12 thereof, the Hon'ble Supreme Court of India has held that Section 243 (2) of the Cr.P.C. is clear that a Magistrate holding an inquiry under Cr.P.C. in respect of an offence triable by him does not exceed his powers under Section 243 (2) of the Cr.P.C. if, in the interest of justice, he directs to send the document for enabling the same to be compared by a handwriting expert because even in adopting this course, the purpose is to enable the Magistrate to compare the disputed signature or writing with the admitted writing or signature of the accused and to reach his own conclusion with the assistance of the expert.

7. Learned counsel for the petitioner next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **T. Nagappa vs. Y.R. Muralidhar** reported in **(2008) 5 SCC 633** and submits that in the said judgment, the Hon'ble Supreme Court of India has also approbated and relied upon paragraph-12 of the Judgment of **Kalyani Baskar**

(Mrs.) vs. M. S. Sampoornam (Mrs.) (supra) and in paragraph-8, the Hon'ble Supreme Court of India has also observed that an accused has a right to fair trial. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India. The right to defend oneself and for that purpose to adduce evidence is recognised by Parliament in terms of Section 243 (2) of the Code of Criminal Procedure.

8. Learned counsel for the petitioner next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **The State (Delhi Administration) vs. Pali Ram** reported in **(1979) 2 SCC 158** paragraph-30 of which reads as under:-

> ***"30**. The matter can be viewed from another angle, also. Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert." (Emphasis supplied)*

and submits that therein the Hon'ble Supreme Court of India has observed that although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-

anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself.

9. It is next submitted that the learned trial court has tried to compare the signature of the petitioner, as was appearing in the statement recorded under Section 313 of the Cr.P.C. with the signature appearing in the Exhibit C-2/CW-1 which is the agreement in which the purported signature of the petitioner is appearing and there the learned trial court has committed a grave error which was also overlooked by the learned Revisional Court. Hence, it is submitted that the prayer, as prayed for in this Criminal Miscellaneous Petition, be allowed.

10. Learned Addl. P. P. appearing for the State and the learned counsel for the opposite party No.2 on the other hand vehemently oppose the prayer of the petitioner made in the instant Criminal Miscellaneous Petition and submit that the consequence of not cross-examining the witness in respect of any portion of his examination-in-chief amounts to admission of the said portion of examination-in-chief and the undisputed fact remains that the C.W.-1 who has introduced the agreement in question in evidence by proving the same, which has been marked as Exhibit C-2/CW-1 and has stated that the same is the agreement entered into between the petitioner on one part and the opposite party No.2 herein who is the complainant of the case as well as the two co-purchasers on the other part. It is then submitted that since there is absolutely no cross-examination of the C.W.-1 regarding the contention of the petitioner made as an afterthought that the signature of the petitioner is not appearing on the Exhibit marked C-2/CW-1, the

consequence is that the same is to be accepted to be true and in view of this overwhelming evidence, the opinion of handwriting expert which is considered to be a weak piece of evidence, is irrelevant and hence, the learned Magistrate in its discretion having thought it fit not to seek the opinion of the handwriting expert and thus the order of the learned Magistrate was unwarranted to be interfered with by the learned Revisional Court, hence, neither the order of the learned Magistrate which was impugned in the Criminal Revision No.214 of 2023 nor the order of the learned Additional Sessions Judge-I, Dhanbad passed in the said criminal revision is suffering from any illegality, therefore, this Criminal Miscellaneous Petition, being without any merit, be dismissed.

11. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Laxmibai (Dead) Through LRs. & Another. vs. Bhagwantbuva (Dead) Thr. LRs. & Ors.** reported in **AIR 2013 (SC) 1204** paragraph-31 of which read as under:-

> *31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination-in-chief, and the scope of this provision stands enlarged by Section 146 of*

> *the Evidence Act, which permits a witness to be questioned, inter alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses. (See Khem Chand v. State of H.P. [1994 Supp (1) SCC 7 : 1994 SCC (Cri) 212 : AIR 1994 SC 226] , State of U.P. v. Nahar Singh [(1998) 3 SCC 561 : 1998 SCC (Cri) 850 : AIR 1998 SC 1328] , Rajinder Pershad v. Darshana Devi [(2001) 7 SCC 69 : AIR 2001 SC 3207] and Sunil Kumar v. State of Rajasthan [(2005) 9 SCC 283 : 2005 SCC (Cri) 1230 : AIR 2005 SC 1096] .)*

wherein the Hon'ble Supreme Court of India settled the principle of law that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue and without this, it is not possible to impeach his credibility.

12. It is pertinent to mention here that there are instances galore where the Hon'ble Supreme Court of India has held that in the absence of cross-examination of a witness, the evidence of such witness remains unchallenged and ought to be believed. In the case of **State of U.P v. Nahar Singh** reported in **AIR 1998 SC 1328,** the Hon'ble Supreme Court of India in paragraph No-13 and 14 held as under:-

> ***"13**. It may be noted here that that part of the statement of PW 1 was not cross-examined by the accused. In the absence of cross-examination on the explanation of delay, the evidence of PW 1 remained unchallenged and ought to have been believed by the High Court. Section 138 of the*

Evidence Act confers a valuable right of cross-examining the witness tendered in evidence by the opposite party. The scope of that provision is enlarged by Section 146 of the Evidence Act by allowing a witness to be questioned:

(1) to test his veracity,

(2) to discover who he is and what is his position in life, or

(3) to shake his credit by injuring his character, although the answer to such questions might tend directly or indirectly to incriminate him or might expose or tend directly or indirectly to expose him to a penalty or forfeiture.

***14**. The oft-quoted observation of Lord Herschell, L.C. in Browne v. Dunn [(1893) 6 R 67] clearly elucidates the principle underlying those provisions. It reads thus:*

"I cannot help saying, that it seems to me to be absolutely essential to the proper conduct of a cause, where it is intended to suggest that a witness is not speaking the truth on a particular point, to direct his attention to the fact by some questions put in cross-examination showing that that imputation is intended to be made, and not to take his evidence and pass it by as a matter altogether unchallenged, and then, when it is impossible for him to explain, as perhaps he might have been able to do if such questions had been put to him, the circumstances which, it is suggested, indicate that the story he tells ought not to be believed, to argue that he is a witness unworthy of credit. My Lords, I have always understood that if you intend to impeach a witness, you are bound, whilst he is in the box, to give an opportunity of making any explanation which is open to him; and, as it seems to me, that is not only a rule of professional practice in the conduct of a case, but it is essential to fair play and fair dealing with witnesses."

This aspect was unfortunately missed by the High Court when it came to the conclusion that explanation for the delay is not at all convincing. This reason is, therefore, far from convincing.

13. It is also a settled principle of law that as has been held by the Hon'ble Supreme Court of India in the case of **Smt. Bhagwan Kaur vs. Shri Maharaj Krishan Sharma & Others** reported in **AIR 1973 1346** as also in the case of **Murari Lal vs. State of Madhya Pradesh** reported in **AIR 1980 SC 531** wherein it was held that:-

> *(a) evidence of a handwriting expert, unlike that of a fingerprint expert, is generally of a frail character and its fallibilities have been quite often noticed.*
>
> *(b) imperfect nature of the science of handwriting, the approach, should be one of caution and the reasons for the opinion must be carefully probed and examined and*
>
> *(c) only in cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of a handwriting expert may be accepted.*

14. It is also a settled principle of law that the testimony of the handwriting expert is a weak type of evidence and it is highly unsafe to pass conviction on such type of evidence as has been held by the Hon'ble Supreme Court of India in the case of **Fakhruddin vs. The State of Madhya Pradesh** reported in **AIR 1967 SC 1326** as also in the case of **Jagmal Singh Yadav vs. Aimaduddin Ahmed Khan** reported in **1994 Supp (2) SCC 308**.

15. In the case of **Shashi Kumar Banerjee & Others vs. Subodh Kumar Banerjee since deceased and after him his legal representatives & Others** reported in **AIR 1964 SC 529,** it was held by the Hon'ble Supreme Court of India that when there is substantial evidence available on record, it has not been shattered by other materials, the substantial evidence shall prevail over handwriting expert evidence.

16. Now, coming to the facts of the case, as already indicated above, the C.W.-1 who has proved the Exhibit C-2/CW-1, has absolutely not been cross-examination regarding the genuineness of the signature put by the petitioner thereon though the C.W.-1 in his examination-in-chief

has categorically stated that it is the petitioner who has signed the said agreement marked Exhibit C-2/CW-1 as the seller of the land.

17. Under such overwhelming evidence, this Court do not find any illegality either in the order dated 21.08.2023 passed by the learned Judicial Magistrate-1st Class, Dhanbad in Complaint Case No.6061 of 2022 or in the order dated 24.09.2025 passed by the learned Additional Sessions Judge-I, Dhanbad in Criminal Revision No.214 of 2023 warranting interference of this Court in exercise of its power under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in view of the settled principle of law, as discussed above.

18. Accordingly, this Criminal Miscellaneous Petition, being without any merit, is dismissed.

19. In view of disposal of the instant Criminal Miscellaneous Petition, I.A. No.11468 of 2026 stands disposed of being infructuous.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 07th of September, 2026
AFR/ Animesh
Uploaded on- 09/09/2026