NEUTRAL CITATION

2026:GUJHC:32270

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 6911 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE L. S. PIRZADA

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Approved for Reporting	Yes	No

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UNITED PETROFER LTD. & ORS.
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR KUNAL S SHAH(5282) for the Applicant(s) No. 1,2,3
MR DEVEN PARIKH SENIOR ADVOCATE WITH MR NIRAV P SHAH(6475) for the Respondent(s) No. 2
MR TUSHAR L SHETH(3920) for the Respondent(s) No. 2
MR DHAWAN JAYSWAL APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE L. S. PIRZADA

Date : 07/05/2026

ORAL JUDGMENT

1. The present petition has been preferred by the petitioners - original accused under Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 (for short "BNSS, 2023") for quashing of the complaint filed by respondent No.2 - original complainant being Criminal Case No.3558 of 2024, pending before the learned 16th Additional Chief Judicial Magistrate, Surat.

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2. The factual matrix, leading to the filing of the present petition, are that one private complaint being Criminal Case No.3558 of 2024 has been given by one - Mr.Amit Nagindas Kapadia as a power of attorney holder of Jalaram Jari Industries, Surat against the accused - United Petrofar Limited and other Directors for the offence punishable under Section 138 read with Section 141 of Negotiable Instruments Act, 1881 (for short, the "N.I. Act").

2.1. As per the case of the original complainant before the learned trial Court, pursuant to the transaction taken place between the original complainant and the original accused, the accused have invited the complainant to join their business and if they invest some amount, they will get more profit and pursuant to that, the complainant has given an amount of Rs.50,00,000/- to the accused on 26.06.2023 and against that, on 27.06.2023, the accused have given the goods worth Rs.21,23,115/- and thereafter, again the accused told the complainant that they have huge quantity of goods and they will again send some goods and complainant will get more profit and then again, the complainant has given Rs.50,00,000/- by cheque of Jalaram Jari Industries firm on

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28.06.2023 but, pursuant to the same, no delivery has been given by the accused persons and subsequently, a credit note has been issued by the accused in the name of the complainant firm on 26.07.2023 for Rs.56,616.40. Subsequently, the amount has been duped and pursuant to that, the accused have issued 8 cheques in favour of the complainant firm, amounting to Rs.74,64,634/- and the said cheques were presented by the complainant - bank its account but, the same were returned unpaid on 08.12.2023. Subsequently, the complainant has given notice to the accused through advocate on 16.12.2023. The said notice was duly served to the accused on 18.12.2023 but, they have not paid heed to the notice and subsequently, after receipt of the notice, they have paid Rs.11,64,634/- and rest of the amount of Rs.63,00,000/- was not paid. Hence, the complaint came to be filed on 12.01.2024 against the accused persons for the offence punishable under Section 138 of the N.I. Act by Mr.Amit Nagindas Kapadia as a power of attorney holder of Jalaram Jari Industries.

2.2. The present petition has been preferred by the accused for quashment of the criminal complaint mainly on the ground

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that the complaint itself is not maintainable as it has not been filed by the authorized person or a power of attorney holder.

3. Learned advocate Mr.Kunal S. Shah for the petitioners submitted that complaint filed against the accused persons is false, frivolous and vexatious because there is a contradiction between the facts described by the complainant and in the complaint, no specific averment has been made regarding how the power of attorney holder is authorized to maintain the complaint. It is submitted that if the complaint and the other documents are accepted even on its face value, the complaint under Section 138 of the N.I. Act is not maintainable. It is submitted that looking to the GST Certificate of the complainant firm, which has been produced along with the complaint, it appears that the said firm is a proprietary firm and the proprietor is one Mr.Sanjaykumar Dhansukhlal Jariwala and looking into the compliant, the power of attorney has not been given by Mr.Sanjaykumar Dhansukhlal Jariwala to Mr.Amit Nagindas Kapadia and, therefore, he cannot file a complaint on the behalf of the proprietary firm and considering the above admitted documents, the complaint is not maintainable. Further, it is submitted that the complaint

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under Section 138 of the N.I. Act is maintainable only if it is made by the payee or holder in due course or by authorized person or the power of attorney holder. But, in the present case, the proprietor of Jalaram Jari Industries is one Mr.Sanjaykumar Jariwala and he has not given any power of attorney or authority to Mr.Amit Nagindas Kapadia. It is submitted that, therefore, the complaint is not maintainable. It is further submitted that Mr.Amit Nagindas Kapadia is not a proprietor of the firm and as he has no connection with the firm, he cannot file a complaint and considering the same, the present complaint is required to be quashed and set aside.

3.1. Further, it is submitted that as per the provisions of the BNSS, 2023 and, more particularly, as per Section 223(1), the Court cannot take cognizance without hearing the accused and this is a new Amended Act and earlier in the old Act of Code of Criminal Procedure, 1973, this provision was not there. In the present case, before taking cognizance, the Court has not issued any notice to the accused persons and has not heard them and, therefore, also there is a violation of the mandatory provisions of law and hence, the present petition is required to be allowed and the complaint is

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required to be quashed and set aside.

3.2. In support of his argument, the learned advocate Mr.Kunal Shah has relied upon the decisions of this Court in the case of Vishal Kamlesh Parikh vs. State of Gujarat and Others, rendered in Criminal Misc. Application (for Quashing & Set Aside FIR/Order) No.19517 of 2013 dated 27.01.2017. He Further, relied upon the decision of Hon'ble Apex Court in the case of (M/s.) Shankar Finance & Investments vs. State of Andhra Pradesh and Ors., reported in 2009 (1) GLH 297 and in the case of Milind Shripad Chandurkar vs. Kalim M. Khan, reported in 2011 (4) SCC 275 and in the case of Kushal Kumar Agarwal vs. Directorate of Enforcement, reported in 2025 INSC 760.

4. On the other hand, learned A.P.P. Mr.Dhawan Jayswal for respondent No.1 submitted that there is a dispute between the private parties and necessary order is required to be passed.

5. Learned Senior Counsel Mr.Deven Parikh appearing with learned advocate Mr.Nirav Shah for the respondent No.2

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submitted that the present petition has no merits and the power of attorney holder can maintain a complaint. It is submitted that looking to the title of the complaint, it is specifically stated in the title that Mr.Amit Nagindas Kapadia is the power of attorney holder of Jalaram Jari Industries firm. Thus, it has been specifically stated that the power of attorney holder of the firm has filed this complaint. It is further submitted that at the time of taking cognizance by the Court, more particularly, in the cases of complaint under Section 138 of the N.I. Act, at the time of issuance of process, the learned Magistrate has to prima facie satisfy or is required to see that issuance of the cheque by the drawer in favour of the complainant is dishonoured, on presentation of the payee, issuance of the statutory notice under Section 138 of the N.I. Act and filing of the complaint within the prescribed statutory period. It is submitted that at the time of taking cognizance, the Court has not to examine the merits and controversy between the parties.

5.1. Further, in support of his argument, learned Senior Counsel Mr.Parikh has relied upon the decision of Hon'ble Apex Court in the case of Renuka vs. The State of

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Maharasthra and Another, reported in 2026 INSC 327. He also relied upon the decision of the Hon'ble Apex Court in the case of M.M.T.C. Ltd. and Ors. vs. Medchi Chemicals & Pharma (P) Ltd. and Ors., reported in AIR 2002 SC 182 and submitted that as per the decision of this Hon'ble Apex Court and as per Section 142 read with Section 138 of the N.I. Act, the complaint can be made by payee or holder in due course and at the time of issuance of process, the Court cannot go into the question whether the cheque has been issued as a security and not for any debt or liability and the Court cannot go into the merits at that time.

5.2. It is submitted that the procedure has already been provided under Section 142 of the N.I. Act. So, as per Section 223(1) of the BNSS, 2023, the Court is not required to issue notice to the accused and hear him before issuance of the process. It is submitted that considering this, present petition is devoid of any merit and is required to be dismissed.

5.3. Learned Senior Counsel Mr.Parikh has further submitted that initially, Jalaram Jari industries, a firm, is a proprietary concern owned by one Mr.Sanjaykumar Dhansukhlal Jariwala

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and initially, he had given power of attorney to Mr.Amit Nagindas Kapadia on 06.11.2015 and Mr.Sanjaykumar Jariwala has expired on 11.11.2023 and before his death, Mr.Sanjaykumar Jariwala had executed a Will and as per the Will, all the assets of the firm have been transferred to the family of Mr.Nagindas Kapadia and on the strength of the said Will, Mr.Nagindas Tulsidas Kapadia, Ms.Geetaben Nagindas Kapadia and Mr.Mithun Nagindas Kapadia have been given the assets and the business of the Jalaram Jari Industries. They have executed a general Power of Attorney in favour of Mr.Amit Nagindas Kapadia on 16.12.2023 pursuant to which, a complaint has been filed on behalf of the firm.

6. After hearing the rival submissions of the learned advocates appearing for the respective parties, the only controversy raised before this Court is that the case is made out by the petitioner that whether the complaint under Section 138 of the N.I. Act is maintained by the Power of Attorney holder or not?

7. In the present case, now, it is required to consider the title of the complaint, which reads as under:-

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> “Amit Nagindas Kapadia Te
> “Jalaram Jari Industries” Pedhi Na Powerdar
> Aged: 37, Occupation: Business,
> Address: Surat”

8. So, from the title of the complaint, it appears that the complaint has been filed by Mr.Amit Nagindas Kapadia, who is the power of attorney holder of the firm, namely, Jalaram Jari Industry. Along with the complaint, a copy of the power-of-attorney is also attached. It is an admitted position that the power-of-attorney holder can maintain a complaint. In this regard, learned advocate Mr.Shah for the petitioners has heavily relied upon the decision of the Hon’ble Apex Court in the case of (M/s.) Shankar Finance & Investments (supra) wherein, the Hon’ble Apex Court, in para 9, has observed as under:-

> “9. The next question is where a proprietary concern carries on business through an Attorney holder, whether the Attorney holder can lodge the complaint? The Attorney holder is the agent of the grantor. When the grantor authorizes the Attorney Holder to initiate legal proceedings and the Attorney holder accordingly initiates legal proceedings, he does so as the agent of the

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grantor and the initiation is by the grantor represented by his Attorney holder, and not by the Attorney holder in his personal capacity. Therefore where the payee is a proprietary concern, the complaint can be filed: (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the 'payee'; (ii) The proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor, and (iii) the proprietor or the proprietary concern represented by the Attorney holder under a Power of Attorney executed by the sole proprietor. It follows that in this case the complaint could have been validly fled by describing the complainant in any one of the following four methods

"Atmakuri Shankara Rao, sole proprietor of M/s. Shankar Finance & Investments"

Or

"M/s. Shankar Finance & Investments a sole proprietary concern represented by its proprietor Atmakuri Shankara Rao"

Or

"Atmakuri Shankara Rao, sole proprietor of M/s. Shankar Finance & Investments, represented by

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his Attorney Holder Thamada Satyanarayana"

Or

"M/s. Shankar Finance & Investments, a proprietary concern of Atmakuri Shankara Rao, represented by his Attorney Holder Thamada Satyanarayana". What would have been improper is for the Attorney holder Thamada Satyanarayana to file the complaint in his own name as if he was the complainant."

9. Even from said decision, it clearly emerges that the power-of-attorney holder can initiate the legal proceedings and when the payee is a proprietary concern, the complaint can be filed (i) by the proprietor of the proprietary concern, describing himself as a sole proprietor of the payee (ii) proprietary concern, describing itself as a sole proprietor concern, represented by its sole proprietor (iii) proprietor or the proprietary concern, represented by the attorney holder under a power-of-attorney executed by the proprietor. Also, the method has been shown by the Hon'ble Apex Court and as per method No.4 - M/s. Shankar Finance & Investments, a proprietary concern of Atmakuri Shankara Rao, represented by his Attorney Holder Thamada Satyanarayana".

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10. In the present case also, the complaint has been filed by Mr.Amit Nagindas Kapadia, who, as per the title of the complaint, is a power-of-attorney holder of Jalaram Jari Industries,. Further, reliance has also been placed on the decision of this Court in the case of Vishal Kamlesh Parikh (supra) wherein, this Court while relying upon the decision of A.C. Narayan (Supra), in paragraph No.5.1, has observed as under:

> "5.1 The Apex Court in the decision of A.C. Narayanan (supra) cited by Mr. Thakkar, learned advocate for respondent no. 2, after considering several judgements on this issue categorically observed in para 31 of the judgement as under:
>
> > "31. In view of the discussion, we are of the opinion that the attorney holder cannot file a complaint in his own name as if he was the complainant, but he can initiate criminal proceedings on behalf of his principal. We also reiterate that where the payee is a proprietary concern, the complaint can be filed:
> >
> > (i) by the proprietor of the proprietary concern, describing himself as the sole proprietor of the "payee";

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(ii) the proprietary concern, describing itself as a sole proprietary concern, represented by its sole proprietor; and

(iii) the proprietor or the proprietary concern represented by the attorney holder under a power of attorney executed by the sole proprietor."

11. It has been specifically observed by this Court that considering the Judgment of Hon'ble Apex Court in the case of A.C. Narayan (supra), Power of Attorney holder cannot file a complaint in his own name as he is the complainant but, he can initiate the criminal proceedings on behalf of the principal and he can maintain the complaint as proprietary concern represented by the attorney holder under the Power of Attorney executed by the proprietor. So, from the decision on which, the learned advocate for the petitioners is heavily relying upon, looking into the facts of the present case, a complaint has been filed by Mr.Amit Nagindas Kapadia not in a personal capacity but, he has initiated the proceedings as a Power of Attorney holder of the propitiatory firm.

12. Further, the another limb of argument of learned

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advocate Mr.Kunal Shah is that as per Section 223(1) of the BNSS, 2023, before taking cognizance, the Court is required to hear the accused. In this regard, it is required to consider that so far as Negotiable Instruments Act, 1881 is concerned, it is a complete Code in itself and under Section 142 of the N.I. Act, a procedure has been prescribed for taking cognizance, which reads as under:-

> **"142. Cognizance of offences.—**
>
> (1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—
>
> (a)no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;
>
> (b)such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:
>
> Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.
>
> (c)no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable

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under section 138.

(2)The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a)if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b)if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.— For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."

13. Considering the above the provisions of the Negotiable Instruments Act, a procedure has been provided for taking cognizance and Section 223(1) of the BNSS, 2023 has not been attracted in the cases where, the complaint has been filed for the offence punishable under Section 138 of the N.I. Act. Further, at this stage, it is also pertinent to note and it is brought to the notice of this Court that in the present case,

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the plea of the accused has already been recorded, complainant has presented his examination-in-chief, the cross-examination of the complainant has already been started and even the learned advocate for the accused before the learned trial Court has also put a question to the complainant i.e. Power of Attorney holder, who has initiated the proceedings on behalf of the propitiatory firm, regarding his knowledge of the transaction and his capacity as a Power of Attorney holder.

14. So, when the trial has already been commenced and the complainant, who is the Power of Attorney holder of the proprietary concern, is in the witness box and cross-examined by the learned advocate for the accused before the trial Court, from the face of the complaint, it cannot be said that the controversy can be decided by this Court by invoking power under Section 528 of BNSS, 2023 as the said controversy or the defence can be put by the petitioners during the trial as the complainant is already in the witness-box and his cross-examination is going on.

15 Considering the above observations, no case is made out

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by the petitioners to quash the complaint under Section 528 of BNSS, 2023 at this stage and the points, which have been raised by the petitioners – original accused before this Court, can be decided at the time of trial only.

16. Hence, I did not find any merits in the present petition.

17. Accordingly, present Special Criminal Application No.6911 of 2025 is hereby dismissed. Rule is discharged. Interim relief granted earlier stands vacated forthwith.

(L. S. PIRZADA, J)

18. After pronouncement of the judgment, learned advocate Mr.Kunal S. Shah for the petitioners requests to stay the execution and implementation of this judgment for a period of four weeks as the petitioners want to approach the Hon'ble Apex Court.

19. Looking to the facts of the case and considering the fact that the complaint is at the stage of further cross-examination of the complainant, request of learned advocate Mr.Shah to

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stay the execution and implementation of this judgment cannot be accepted and the same is hereby rejected.

(L. S. PIRZADA, J)

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