



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

S.B. Criminal Miscellaneous (Petition) No. 4345/2026
CNR: RJHC010538242026 | URN: CRLMP / 7878U / 2026

Gulam Mohd. S/o Hazi Abdul Sattar, Aged About 42 Years,
Resident Of 35, Momino Ka Mohalla, Tehsil & District Pali.

-----Petitioner

Versus

1. Gopal Traders, F-307, Mandiya Road, Pali Through Prop.
Beni Gopal Lohati S/o Shri Ramnath Ji Lahoti, resident
of 69 Veer Durgadas Nagar, Pali (Raj.)
2. State Of Rajasthan, Through PP

-----Respondents

For Petitioner(s)	:	Mr. R.C. Joshi.
For Respondent(s)	:	Mr. Vikram Singh Rajpuroit, PP Mr. Ravindra Singh Bhati, AGA

HON'BLE MR. JUSTICE SUNIL BENIWAL

Reportable

Order

Conclusion of Arguments &

Reserved on : 10/09/2026

Pronounced on : 18/09/2026

1. The present criminal misc. petition under section 528 of BNSS, 2023 (old Section 482 CrPC) has been filed against the order dated 24.03.2026 passed learned Session Judge, Pali in Revision Case No.42/2026, whereby the revision petition filed by the petitioner stood dismissed and the order dated 10.02.2026 passed by the learned Special Judicial Magistrate (N.I. Act cases) No.1, Pali, permitting a bank return memo to be marked as Exhibit-9, was affirmed.



2. Brief facts of the case as narrated in the petition are that respondent No.1 - complainant filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as "the Act of 1881"), alleging that the petitioner had borrowed a sum of Rs.3,90,000/- and, towards repayment of the said amount, issued a cheque in favour of the complainant. Upon presentation, the cheque was dishonoured for the reason "Insufficient Funds" vide return memo dated 06.04.2018. Thereafter, the complainant issued a statutory demand notice and, upon non-payment of the cheque amount, instituted the complaint.

2.1. During the course of trial, the complainant was examined and, on 04.03.2020, produced the bank return memo, which was marked as Exhibit-2. The said memo did not bear the seal or signature of the Bank or any authorised officer. Subsequently, the complainant again produced the return memo bearing the Bank's seal and the signature of an authorised person, which was permitted to be marked as Exhibit-9 on 09.02.2026.

2.2. The petitioner objected to the marking of the said return memo as Exhibit-9 on the ground that the same document had already been exhibited earlier as Exhibit-2. The objection was, however, rejected by the learned trial Court vide order dated 10.02.2026.

2.3. Aggrieved by the order dated 10.02.2026, the petitioner preferred a revision petition before the learned Sessions Judge, Pali. The revision petition was dismissed vide order dated 24.03.2026. Hence, the present petition.



3. Learned counsel for the petitioner submitted that the complainant could not have been permitted to introduce another bank return memo relating to the same transaction after the earlier memo had already been exhibited as Exhibit-2. It was argued that when the complainant, while being examined as CW-01, was confronted in cross-examination with the fact that Exhibit-2 did not bear the seal or signature of the Bank or any authorised officer, the subsequent memo bearing such seal and signature was produced only to fill up the lacuna in the complainant's case. Moreover, no application was filed to take the document on record, rather, the document was produced with a '*Talbana*' and was marked as exhibit.

3.1. Learned counsel further submitted that the reasoning of the learned trial court, that the petitioner would have an opportunity to cross-examine the complainant with respect to the subsequent memo, is not sufficient to justify its exhibition, particularly when a document concerning the same transaction had already been exhibited earlier. Thus, permitting the subsequent memo to be marked as Exhibit-9 amounts to allowing the complainant to cure a defect in its evidence at a later stage.

3.2. Learned counsel further submitted that the revisional court, despite noticing that both the return memos were identical except for the seal and signature appearing on the subsequently produced document, dismissed the revision petition on substantially the same reasoning. It was contended that the revisional court failed to consider that permitting the subsequent document to be exhibited effectively allowed the complainant to



cure a defect which had already surfaced during cross-examination.

3.3. In view of the aforesaid submissions, learned counsel for the petitioner prayed that both the impugned orders be quashed and set aside and the objections raised by the petitioner be allowed. It was further prayed that Exhibit-9, produced by respondent No. 1 - complainant, be de-exhibited.

4. Per contra, learned Public Prosecutor vehemently opposed the submissions advanced by learned counsel for the petitioner and submitted that the learned trial court rightly proceeded to subsequently mark the return memo as Exhibit-9 and the revisional court rightly affirmed the order passed by the learned trial court. He further argued that no prejudice would be caused on account of exhibiting the said memo as Exhibit-9, as the matter is presently at the stage of complainant's evidence and the petitioner would be free to raise all valid objections during cross-examination.

Based on the above submissions, he submitted that no interference is required with the well-reasoned order passed by the learned revisional court. As a consequence thereof, the present petition is liable to be dismissed summarily.

5. Heard learned counsel for the parties and perused the material available on record.

6. The prime issue that requires consideration by this Court is whether the document i.e. return memo of the bank, which was earlier exhibited as Exhibit-2 can again be allowed to be exhibited



with an additional endorsement of the bank authorities, as another exhibit i.e. Exhibit-9.

7. A perusal of the statements of the complainant (CW-01) reflects that the complainant produced an online generated return memo of the bank indicating the reason for dishonouring of the cheque and later, during cross-examination, when a question was posed by the counsel for the respondent (present petitioner) regarding validity of such document without seal and sign, the complainant produced a fresh return memo bearing the authenticated seal of the bank and signature of the authorized signatory.

8. The submission of learned counsel for the petitioner that allowing such document to be exhibited again is nothing but an attempt to fill the lacuna and the same is not permissible under the law, cannot be accepted. The Court has to take into consideration the facts and circumstances of the case so as to ascertain whether the document produced or the witness sought to be re-examined is to fill a lacuna or is to support the case of the concerned party already advanced before the Court. It would be apposite to refer the renditions of Hon'ble the Supreme Court on this principle.

8.1. The Apex Court in the case of **Rajendra Prasad v. Narcotic Cell through its Officer in Charge, Delhi; (1999) 6 SCC 110** while discussing about the concept of lacuna, observed as under :-

"8. It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under Section 311 of the Code or under



Section 165 of the Evidence Act by saying that the Court could not 'fill the lacuna in the prosecution case'.

A lacuna in prosecution is not to be equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses.

The adage 'to err is human' is the recognition of the possibility of making mistakes to which humans are proved. A corollary of any such latches or mistakes during the conducting of a case cannot be understood as the lacuna which a court cannot fill up.

9. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an over sight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can before-closed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better."

8.2. Similarly, the Apex Court in the case of **P. Chhaganlal Daga v. M. Sanjay Shaw; (2003) 11 SCC 486**, observed as under :-

"6. In deciding so, this court has taken into account some of the earlier decisions of this court including Mohanlal Shamji Soni v. Union of India : 1991 CriLJ 1521. In the said decision this court had observed that the power to receive evidence in exercise of Section 311 of the Code could be exercised "even if evidence on both sides is closed" and such jurisdiction of the court is dictated by the exigency of the situation and fair play. The only factor which should govern the court in exercise of powers under Section 311 should be whether such material is essential for the just decision of the case. Even a reading of Section 311 of the Code would show that Parliament has studded the said provision lavishly with the word "any" at different places. This would also indicate the widest range of power conferred on the court in that matter. It is so stated by this court in Ram Chander v. State of Haryana : 1981 CriLJ 609.

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8. We, therefore, allow this appeal and set aside the impugned order of the High Court. If the accused is desirous of cross-examining the complainant on the basis of the new material produced, it is open to him to make a motion before the court for that purpose."





8.3. In another case, **U.T. of Dadra & Nagar Haveli v. Fatehsinh Mohansinh Chauhan; (2006) 7 SCC 529**, the Apex Court observed as under :-

"12. A conspectus of authorities referred to above would show that the principle is well settled that the exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal court. Calling a witness or re-examining a witness already examined for the purpose of finding out the truth in order to enable the Court to arrive at a just decision of the case cannot be dubbed as "filling in a lacuna in prosecution case" unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused resulting in miscarriage of justice."

8.4. Keeping into consideration the above observations of the Apex Court, this Court is of the opinion that the present is not a case where a certain piece of document, though essential, was not produced and at a later stage, document is sought to be exhibited without any justification. In the present case, the return memo of the bank was exhibited at the initial stage, however, it was a computer generated slip and when the admissibility of such document was questioned, the complainant produced a return memo bearing the endorsement of the bank authority. Such production of document cannot be said to be an attempt to fill the lacuna, but only correction of an inadvertent error.

9. There is yet another reason for not accepting the arguments made by learned counsel for the petitioner. It is to be noted that there is difference between document being exhibited and it being admitted. The purpose of exhibiting document is only for the purpose of marking it for identification, however, whether such



document would be admissible as a piece of evidence is to be decided separately after the same is put to test as per the procedure provided in the Bhartiya Sakshya Adhiniyam.

9.1. The Hon'ble Supreme Court in the case of **LIC of India v. Ram Pal Singh Bisen; (2010) 4 SCC 491** while discussing about the marking of document held as under:

"26. We are of the firm opinion that mere admission of document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law. As has been mentioned herein above, despite perusal of the record, we have not been able to come to know as to under what circumstances respondent plaintiff had admitted those documents. Even otherwise, his admission of those documents cannot carry the case of the appellants any further and much to the prejudice of the respondent."

9.2. The same principle has received reaffirmation in the recent decision of the Hon'ble Supreme Court in **S. Sangeetha & Ors. v. Tmt. P. Ponni; 2026 INSC 813** wherein the Hon'ble Supreme Court relied on its earlier decision of **Ram Pal Singh Bisen** (supra) and held as under:

"10. Moreover, in our view, the contentions raised and documents marked in the proof affidavit relating to pendency of other suits and transfer of properties relating to the very same family structure cannot be rejected at the threshold. We advert to the observations of a three-Judge Bench of this Court in Bipin Shantilal Panchal v. State of Gujarat (2001) 3 SCC 1:

13. It is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fallout of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or the revisional court, when the same question is re-canvassed, could take a different view on



the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

(Emphasis supplied)

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12. Therefore, in the instant case, the contents of the documents which have been marked/exhibited will have to be proved in accordance with law. We find no reason to eschew them, at this stage."

9.3. The ratio of the aforesaid authorities establishes that tendering or marking a document as an exhibit does not dispense with the legal requirement of proof, nor does such marking, by



itself, make the document admissible evidence. In the present case, the document is simply exhibited, however that would not automatically deemed to be admitted. As informed, the trial is at the stage of evidence of the complainant and therefore, the petitioner would be having fullest of opportunity to cross-examine so as to test the authenticity of the document Exhibit-9. Thus, the mere fact that the subsequent bank-return memo has been marked as Exhibit-9 cannot, by itself, be treated as conclusive proof of the document, its execution, or the truth of its contents. The evidentiary effect of the document continues to remain subject to proof in accordance with law.

10. It is settled position of law that the procedural laws are meant to administer justice and merely for the reason that such document was entertained without there being any formal application under Section 311 Cr.P.C. would not vitiate its marking or the trial.

10.1. In this regard, the Constitution Bench judgment of the Hon'ble Supreme Court in **Willie (William) Slaney v. State of Madhya Pradesh; AIR 1956 SC 116**, lays down the governing principle wherein it was held as under:

"6. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood line that accord with our notions of natural justice. If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided





there is substantial compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.

7. Now here, as in all procedural laws, certain things are regarded as vital. Disregard of a provision of that nature is fatal to the trial and at once invalidates the conviction. Others are not vital and whatever the irregularity they can be cured; and in that event the conviction must stand unless the Court is satisfied that there was prejudice. Some of these matters are dealt with by the Code and wherever that is the case full effect must be given to its provisions.

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10. Now it is obvious that the question of curing an irregularity can only arise when one or more of the express provisions of the Code is violated. The question in such cases is whether the departure is so violent as to strike at the root of the trial and make it no trial at all or is of a less vital character. It is impossible to lay down any hard and fast rule but take by and large the question usually narrows down to one of prejudice. In any case, the court must be guided by the plain provisions of the Code without straining at its language wherever there is an express provision."

10.2. The Apex Court explained that the Code of Criminal Procedure is a code of procedure designed to further the ends of justice and that mere procedural mistakes or inconsequential errors and omissions do not vitiate a trial unless substantial prejudice is demonstrated. The Constitution Bench, however, made the necessary qualification that some provisions are vital and that disregard of such provisions may be fatal, whereas other procedural requirements may be curable depending upon the circumstances and prejudice caused. Thus, the judgment in the case of **Willie Slaney** (supra) does not lay down that every breach of procedure is automatically curable. Equally, it does not lay down that every departure from the prescribed procedure



automatically vitiates the proceeding. The Court is required to examine the nature of the provision, the nature of the departure and, importantly, the prejudice or failure of justice occasioned thereby.

10.3. Therefore, the question is not merely whether the prescribed procedural course was followed in its strictest form, but whether the departure complained of has resulted in such prejudice to the accused as would strike at the root of the proceeding or result in failure of justice. The principle in **Willie Slaney** (*supra*) is particularly relevant because Hon'ble the Supreme Court cautioned that procedural provisions have to be understood in the context of the object of a fair trial. The Court has drawn a distinction between a defect which goes to the root of the proceeding and a procedural irregularity which does not cause substantial prejudice.

10.4. Since, the present petitioner would be afforded an opportunity to cross-examine with respect to the said document, no such substantial prejudice or failure of justice is shown to have been occasioned.

11. As an upshot of the above discussion, the present criminal misc. petition is devoid of merit and same is accordingly dismissed.

12. Needless to observe that the trial court would permit the petitioner to cross-examine the complainant, if not already permitted, so as to allow him to test the genuineness of the document so exhibited so also to allow him to raise all possible



objection with regard to admissibility of such document in accordance with law.

13. Pending application(s), if any, stand(s) disposed of.

(SUNIL BENIWAL),J

RAKESH MATHUR

