IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION NO. 77 of 2012

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

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Approved for Reporting	Yes	No
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RAMESHBHAI SHANTILAL SHAH
Versus
STATE OF GUJARAT & ANR.

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Appearance:
BAILABLE WARRANT UNSERVED for the Applicant(s) No. 1
MR HEMANT B RAVAL(3491) for the Applicant(s) No. 1
MR UDAY R BHATT(192) for the Respondent(s) No. 2
MR ROHAN RAVAL, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Date : 20/04/2026

JUDGMENT

[1.0] By way of present revision application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short "CrPC"), the applicant has prayed for quashing and setting aside of the judgment and order dated 30.07.2011 passed by the learned Metropolitan Magistrate NIA Court No.6, Ahmedabad in New Criminal Case No.1436/2008 (Old Criminal Case No.494/2002) as well as the judgment dated 31.01.2012 passed by the learned Additional Sessions Judge, Court No.11, Ahmedabad in Criminal Appeal No.314/2011.

[2.0] Perusing the record, it appears that the complainant filed complaint against the present applicant on 13.05.2002 alleging that the applicant has not repaid the hand loan of Rs.95,000/- given in cash

by the complainant to the applicant as complainant and applicant were friends since long. It further appears that after some time, the applicant had given a cheque drawn on Nutan Nagarik Sahkari Bank, Kapdiwas Branch, Ahmedabad which was dishonored with endorsement "Opening Balance Insufficient" and thereafter, the complainant had issued demand notice dated 16.04.2002 but of no avail and therefore, the complaint being Criminal Case No.1436/2008 under Section 138 of the Negotiable Instruments Act, 1881 (for short "NI Act") was filed.

[3.0] The learned Magistrate convicted the present applicant by judgment and order dated 30.07.2011 for the offence under Section 138 of the NI Act and imposed punishment of six months' simple imprisonment upon the applicant with fine of Rs.5000/- and in default of payment of fine, further simple imprisonment for three months was imposed. Being aggrieved and dissatisfied, the applicant preferred an appeal being Criminal Appeal No.314/2011 under Section 374 of the CrPC which was dismissed by the learned Additional Sessions Judge, Court No.11, Ahmedabad vide judgment and order dated dated 31.01.2012 upholding the judgment and order passed by the learned Magistrate. Hence, present applicant has filed the present revision application.

[4.0] Heard learned advocate Mr. Hemant Raval for the applicant. He has submitted that the applicant – accused is not in his contact since the date he has been granted bail by the coordinate Bench vide order dated 02.03.2012 and even the Bailable Warrant issued by this Court vide order dated 12.03.2026 has returned unserved. Hence, in considered opinion of this Court, there does not appear any possibility of settlement as the applicant is not traceable and not available. Even,

the learned advocate for the applicant – accused has requested to pass appropriate order.

[5.0] Having heard learned advocates appearing for respective parties and perusing the record, it appears that the applicant availed hand loan of Rs.95,000/- on 13.05.2002 from the respondent No.2 – complainant and towards repayment of said amount, applicant issued cheque in question which was dishonored with endorsement "Opening Balance Insufficient" and even thereafter, the applicant did not make the payment of the said amount. In this regard, the complaint was filed. In order to prove the said complaint, the complainant has filed his affidavit of examination in chief at Exh.3 and the cheque in question is produced at Exh.5, return memo at Exhs.6 & 7, statutory notice at Exh.11, registered AD money slip at Exh.8, UPC receipt at Exh.9, RPAD acknowledgement slip at Exh.10, copy of complaint filed by wife of applicant against the complainant and reply to notice given by the applicant at Exh.21. After recording the evidence, further statement of accused came to be recorded under Section 313 of the CrPC. Though opportunity to rebut the presumption and to examine the witness or produce evidence was given to the accused before the learned trial Court, the accused did not do so.

[5.1] It is undisputed and admitted fact that the accused has received a hand loan of Rs.95,000/- on 13.05.2002 from the respondent – complainant and as he failed to repay the said amount and cheque for an amount of Rs.95,000/- came to be drawn and signed by the accused in favor of respondent No.2 – complainant and signature of accused is not disputed. It is also not in dispute that the cheque was returned due to "opening balance insufficient". Hence, statutory presumption under Section 139 of the NI Act is required to be drawn. Further, the

applicant though was given an opportunity, has not deposed on oath before the learned trial Court and has not even examined any witness in support of his case. Further, the applicant has not even proved the documentary evidence produced on his behalf and has only stated that the cheque in question was issued towards security and not towards legally enforceable debt. But, the applicant has accepted and admitted his signature on the cheque in question. Hence, in view of the law laid down by the Hon'ble Apex Court in the case of **Tedhi Singh v. Narayan Dass Mahant** reported in **(2022) 6 SCC 735** and **Kalamani Tex v. P. Balasubramanian**, reported in **(2021) 5 SCC 283**, the effect of admission regarding the signature on the cheque is explained. Once the signature is admitted, it is required to be presumed that the cheque was issued towards consideration for a legally enforceable debt. Further once, signature is accepted then cheque was issued towards the security and it was signed. As per explanation of legal position on how to rebut the presumption under Section 139 of the NI Act and to raise the presumption under Section 139 of the NI Act, the Hon'ble Apex court has clearly explained in the case of **Rajesh Jain v. Ajay Singh** reported in **(2023) 10 SCC 148**. Considering the aforesaid fact, presumption under Section 118 of the NI Act, even if for the sake of argument it is accepted that cheque was issued towards security, even then it is not a piece of paper and is a valuable security and under Sections 87 and 20 of the NI Act gives the power to holder of the cheque to complete inchoate instrument. It appears that both the Courts have properly exercised the jurisdiction as the cheque was presented before the Bank and same came to be dishonored with endorsement "Opening Balance Insufficient" and there are concurrent finding of facts assigned by both the Courts below.

[5.2] This is not the case wherein cheque of amount more than the outstanding amount is drawn and same is misused for the purpose or intention to recover the amount. There is no bar to fill up the cheque as the signature is not denied. Once blank leaf of cheque is provided then it is the authority of the holder of the cheque to fill up the contents or details in the cheque which is also permissible under the law. Hence, the learned trial Court as well as the learned appellate Court have rightly convicted the applicant – accused. Even otherwise, the conduct of the applicant – accused is required to be considered as after being released on bail by the coordinate Bench way back in the year 2012, the applicant has never bothered to pursue the present application and even the Bailable Warrant issued by this Court has returned unserved, which is sufficient to draw an inference that the applicant has lost interest in the present application.

[5.3] Even otherwise, the revisional jurisdiction can be exercised where there is a palpable error or non-compliance with the provision of law and where decision is completely erroneous and where the judicial discretion is exercised arbitrarily. Herein, if we examine the reasons assigned by the learned trial Court, it appears that learned trial Court has already appreciated the facts and finding of fact not to be upset unless it is found perverse and finding of fact not to be substituted keeping in mind the ratio of Hon'ble Supreme Court in the case of **Amit Kapoor vs. Ramesh Chander & Anr.** reported in **(2012)9 SCC 460** as no perversity is found in the reasons assigned by the learned trial Court and upheld by the learned appellate Court. Both the Courts have properly assigned reasons and given the finding based on evidence led and hence also, no interference at the hands of this Court in exercise of revisional jurisdiction is required.

[5.4] It would be appropriate to refer to the decision of the Hon'ble Supreme Court in the case of **Malkeet Singh Gill vs. State of Chhatisgarh** reported in **(2022)8 SCC 204** wherein the Hon'ble Supreme Court held that section 397/401 CrPC vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction of law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings. It is a settled legal proposition that if the Courts below have recorded the finding of fact, the question of re-appreciation of evidence by the Court does not arise unless it is found to be totally perverse.

[6.0] It is needless to say that the offence under Section 138 of the NI Act is *quasi* criminal in character and is also compoundable one and the punishment under the NI Act is not a means of seeking retribution but is a more means to ensure payment of money and to promote credibility of cheques as a trustworthy substitute for cash payment. In view of above, considering the longstanding dispute since the year 2002 and since the present application is filed in the year 2012, this Court in order to provide one opportunity, put it to the learned advocate for the applicant – accused to inquire from the applicant if he wants to settle the dispute by making payment of outstanding amount to the respondent No.2 – complainant, to which the learned advocate for the applicant, as stated hereinabove, has submitted that applicant – accused is not in his contact and thus, it appears that this

Court could not see any possibility of settlement at the hands of the applicant – accused.

[7.0] In wake of aforesaid conspectus, present revision application fails and stands **dismissed**. Rule is hereby discharged. Interim relief granted earlier stands vacated forthwith. The applicant – accused to forthwith surrender before the learned trial Court to serve the remaining sentence, if any.

Sd/-
(HASMUKH D. SUTHAR, J.)

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