IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION NO. 205 of 2008

With
CRIMINAL MISC.APPLICATION NO. 1 of 2008
In R/CRIMINAL REVISION APPLICATION NO. 205 of 2008
With
CRIMINAL MISC.APPLICATION (FOR DIRECTION) NO. 1 of 2017
In R/CRIMINAL REVISION APPLICATION NO. 205 of 2008

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

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Approved for Reporting	Yes	No

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ATULKUMAR B. JOSHI
Versus
STATE OF GUJARAT & ANR.

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Appearance:
BAILABLE WARRANT SERVED for the Applicant(s) No. 1
MR VASANTS SHAH(810) for the Applicant(s) No. 1
MR AMIT C NANAVATI(1384) for the Respondent(s) No. 2
MR ROHAN H. RAVAL, APP for the Respondent(s) No. 1

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

Date : 15/04/2026

JUDGMENT

1) By way of present revision application under Sections 397 read with 401 of the Code of Criminal Procedure, 1973, the applicant has prayed for quashing and setting aside the judgment and order of conviction and sentence dated 05.11.2007 passed by the learned Judicial Magistrate First Class, Unjha, in Criminal

Case No.968 of 2004, whereby, the trial Court has been pleased to hold the applicant guilty for the offence punishable under Section 138 of the Negotiable Instruments Act (which shall hereinafter be referred to as "**NI Act**" for short) and sentenced to undergo simple imprisonment of one year along with fine of Rs.5,000/- failing which to undergo further three months simple imprisonment and also directed to pay Rs.5,67,500/- as compensation to the complainant. The said order was assailed by way of filing Criminal Appeal No.96 of 2007, wherein, vide order dated 07.03.2008 passed by the learned Sessions Judge, Mehsana at Visnagar, the appeal came to be dismissed and the order of conviction and sentence has been confirmed. Hence, the present Revision Application is filed by the applicant-accused.

2) Brief facts of the case is that, the complainant is residing at village Kahoda, Taluka Unjha and is an agriculturist and also doing business, whereas the applicant is serving in Nova Company. The applicant used to come often to the shop of the complainant and in July, 2004, the applicant informed the complainant that he is required to pay Rs.6 lacs to one person within two days, but he does not have money. Therefore, the complainant gave Rs.5,67,500/- to the applicant, who assured to return the said amount within a month. Thereafter, as the said amount was not repaid by the applicant and upon demanding

money back by the complainant, the applicant had given a cheque of Rs.5,67,500/- to the complainant with an assurance that it would be honored. Thereafter, the complainant deposited the said cheque in his bank on 20.10.2004. and on 29.10.2004, the said cheque was dishonoured for want of sufficient funds. The complainant therefore, served the petitioner - accused with notice through his advocate dated 03.11.2004 by Registered A.D. post and by U.P.C. The notice was served upon the petitioner, however, the applicant did not repay the amount. A complaint came to be registered under section 138 of the NI Act before learned JMFC Court, in which the applicant was convicted. The said conviction was challenged before the learned Sessions Court, Mahesana, by filing Criminal Appeal No.96/2007, which came to be dismissed vide order dated 07.03.2008.

3) Learned Advocate for the applicant has submitted that both the courts below have erred in not considering the fact that the complainant has come with a case as per the complaint that he gave Rs.5,67,500/- from the house whereas, in the deposition he has stated on oath that he withdrew the said amount from the Bank. This major contradiction in the oral as well as in the written complaint goes to the root of the case and raises serious doubt about the veracity of the complaint. Further, learned courts below have also erred in not considering the fact that

there is not an iota of evidence on the record to show, suggest or establish that the complainant was having with him such a large amount of Rs.5,67,500/- at his residence at the relevant time nor there is any evidence to show that he withdrew the said amount from the Bank. In such circumstances, both the courts below ought to have believed the defence of the accused that the cheque signed by the applicant has been misused by the complainant; that learned courts below have also erred in not considering the fact that looking to the financial position of the complainant, it was not possible that he would keep such large amount of Rs.5,67,500/- at his residence without any convincing reason; that the lower appellate Court has also grossly erred in not considering the fact that the impugned order passed by the learned Judicial Magistrate, First Class, Unjha is basically erroneous and *ab initio* illegal because, it is ordered by the learned Magistrate that the accused shall undergo a sentence of one year Simple imprisonment and fine of Rs.5,000/- in default Simple Imprisonment for 3 months more but furthermore he has directed that the petitioner shall pay a compensation of Rs.5,67,500/- to the complainant u/s 357 of Cr.P.C. This part of the order is illegal because, the learned Magistrate has not properly construed Section 357 at all. Compensation u/s 357 can be passed only out of the amount of fine and order of separate compensation independent of the amount of the fine can be

passed and to that extent the order passed by the learned Magistrate is *ab initio* void and illegal and it cannot be sustained at all. Therefore, he has prayed to allow present revision application.

4) Learned counsel for the complainant as well as learned APP for the respondent State have jointly opposed the present application and submitted that, the learned Courts below have not committed any error in recording the conviction of the applicant. After appreciating the material produced on record, learned Courts below have passed the impugned orders, which are just, legal and proper. Hence, they prayed to dismiss the present revision application.

5) Having heard learned counsel for the respective parties and perusing the material placed on record, it appears that the applicant borrowed Rs.5,67,500/- from the respondent no.2 – complainant and assured to return the same before the end of August. Thereafter, the complainant demanded the money but the accused failed to return and issued Cheque bearing No.387617 dated 15.09.2004 for an amount of Rs.5,67,500/- duly signed by the applicant however, when the cheque was presented before the bank it got dishonored with an endorsement of "funds insufficient". In this regard, the complaint was filed. In order to prove the said complaint, the

complainant has examined himself at Exhibit 11, wherein, he has identified the cheque at Exhibit 16 which was issued by the accused. The documentary evidence reveals that the accused has admitted his signature on the cheque at Exhibit 16 and even the accused has not disputed the issuance of cheque on 15.09.2004. It is also not in dispute that the cheque was returned due to insufficiency of funds. Hence, statutory presumption under Section 139 of the NI Act is required to be drawn. It further reveals from the examination in chief of the complainant at Exhibit 11 that the accused gave evasive reply to the statutory notice issued by the complainant but record reveals that the accused failed to rebut the said evidence based on preponderance of probabilities and the said aspect is also considered by the learned trial Court and in para 10 of the said judgment it clearly dealt with whatever defence taken by the accused. The cheque was issued only to recover amount of Rs.17,000/- is not believed and cheque was misused and defence raised in the reply of notice is not proved and the same is not found to be believable. 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. 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 "funds insufficient". Within the prescribed time limit, the notice of demand was issued which was replied to by the accused but failed to prove his defence based on preponderance of probabilities.

6) Nothing is coming out from the length cross-examination of the complainant which can be helpful to the accused. The Appellate Court has also reappreciated the evidence and came to the conclusion that the learned trial Court has not committed any error and considered the admission of the signature and issuance of cheque are proved on the part of the accused and the accused failed to rebut the presumption under Section 118

and 139 of the NI Act.

7) Furthermore, 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. Learned trial Court has properly assigned reasons and given the finding based on evidence led before him and hence also, no interference at the hands of this Court in exercise of revisional jurisdiction is required.

8) 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.

9) 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 2004 and since the present application is filed in the year 2008, 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 today the learned

Advocate Mr. Vasants Shah, for the applicant has submitted that the applicant has settled the disputed with the complainant and handed over Banker's Cheque bearing No.891090, dated 13.04.2026, for amount of Rs.4,00,000/- of Bank of India, Manek Chowk Branch, Ahmedabad, in favour of the complainant, which is handed over to learned Advocate Mr. Amit C. Nanavati, for the respondent no.2 – original complainant and he has also accepted the factum of settlement before this Court. The copy of the said Banker's Cheque is taken on record.

10) At the same time this Court has taken into consideration the object of the Act as accused made payment and complainant has received the same, hence, in view of judgment of the Hon'ble Supreme Court ***Sanjabij Tari Vs Kishore S. Borcar,*** *Neutral Citation* ***2025 INSC 1158***, maintaining the conviction this Court is inclined to extend the benefit under the Probation of Offenders Act, 1958, to the applicant-accused.

11) Accordingly, the applicant – accused is directed to be released on probation of good conduct under Section 4 of the Probation of Offenders Act, upon execution of probation bond in sum of Rs.20,000/-, with one surety of like amount for a period of one (1) year.

12) It is hereby further directed that the applicant - accused shall

receive the sentence as and when called upon till the said period and the applicant shall maintain peace during above mentioned period of one (1) year.

13) The above mentioned bond under Section 4 of the Probation of Offenders Act, be submitted before the learned trial Court within 15 days of passing of this judgment.

14) Accordingly, present revision application is **disposed of**. Record and proceedings, if any, be sent back to the concerned Court forthwith. The Criminal Misc. Application No.1 of 2008 and Criminal Misc. Application No.1 of 2017, also stand **disposed of**.

(HASMUKH D. SUTHAR,J)

ANKIT JANSARI