NEUTRAL CITATION

2026:GUJHC:37382

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION - NEGOTIABLE INSTRUMENT ACT) NO. 1129 of 2023
With
CRIMINAL MISC.APPLICATION (FOR MODIFICATION OF ORDER) NO. 2 of 2025
In
R/CRIMINAL REVISION APPLICATION NO. 1129 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE NISHA M. THAKORE

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Approved for Reporting	Yes	No
	Yes	

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NILESH RAMANLAL CHUNAWALA
Versus
STATE OF GUJARAT & ANR.

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Appearance:
BAILABLE WARRANT SERVED for the Applicant(s) No. 1
MR PRABHAKAR UPADYAY(1060) for the Applicant(s) No. 1
KETAN B JAIN(9292) for the Respondent(s) No. 2
MR SHRIRAJ D SHAH(10475) for the Respondent(s) No. 2
Ms. Krina Calla, Addl. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:**HONOURABLE MS. JUSTICE NISHA M. THAKORE**
Date : 19/06/2026
ORAL JUDGMENT

1. The present Criminal Revision Application is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Code”), at the instance of the original accused, being aggrieved and dissatisfied with the judgment and order dated 7th January

2022 passed by the learned Additional Chief Judicial Magistrate, Court No. 27, Vadodara, in Criminal Case No. 28260 of 2017. By the said judgment and order, the learned Magistrate has convicted the present applicant for the offence punishable under Section 138 of the Negotiable Instruments Act,1881, thereby imposing sentence of 18 months simple imprisonment and awarding compensation of sum of Rs.1,59,16,666/-. It is further directed that in case of default, the applicant- original accused shall undergo simple imprisonment for a period of three months.

1.1. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction, the applicant has preferred appeal under Section 374(3) of the Code before the Court of learned District and Session Judge, Vadodara, which was registered as Criminal Appeal No. 30 of 2022. The learned Judge by judgment and order dated 2nd September 2023 was pleased to dismiss the appeal thereby upholding the order of conviction passed by the learned Magistrate. Hence, the present Criminal Revision Application challenging the aforesaid orders passed by the Court below.

2. Considering the grounds raised in the Criminal Revision Application, the Coordinate Bench of this Court, vide order dated 16th October 2023 was pleased to admit the Revision Application and was further pleased to suspend the impugned judgment and order of conviction, thereby enlarging the applicant on bail, subject to deposit of 10% of the cheque amount before the Trial Court along with other conditions. The application for withdrawal/disbursement of the amount deposited was preferred by the original complainant being Criminal Miscellaneous Application No. 1 of 2025 in the captioned application, which came to be allowed vide order dated 7th October 2025, thereby permitting the original complainant to withdraw sum of Rs.16,92,000/- i.e. 10% of the cheque amount, subject to furnishing bank guarantee of like amount. Since, the original complainant was unable to comply with the aforesaid condition of furnishing bank guarantee, the present application, being Criminal Miscellaneous Application No. 2 of 2025, was preferred by the original complainant praying for modification of the aforesaid order, essentially the modification of the condition imposed of furnishing bank guarantee by offering undertaking. Considering the fact that the main revision application has been notified for final

hearing, the said application was heard along with the main matter.

Submissions on behalf of Applicant - Original Accused :

3. Learned advocate, Mr. Prabhakar Upadhyay, has appeared for the applicant - original accused and has at the outset invited my attention to the facts of the case.

3.1 It was submitted that the transaction in question is a compromise deed in respect to agricultural lands, whereby, in the past, the parties were pursuing proceedings in appeal before this Court. It was pointed out that in all three First Appeals were filed by the family members of the original complainant, who sought their right in the disputed properties on the basis of a Will executed by the erstwhile owner. Initially, in the year 2000, a succession certificate was issued in the name of Mavjibhai Makwana, which was the subject matter of challenge before the Probate Court. The revocation application preferred by the family members of the original accused was rejected and was subject matter of challenge in three different First Appeals. In the aforesaid appeals before this Court, the settlement was arrived upon between the parties including with the original complainant. He has

further submitted that in view of the aforesaid settlement, the family members of the original complainant had agreed to relinquish their rights in the disputed land for consideration of Rs.1 crore. The aforesaid settlement deed was reduced in writing and was executed on 18th June 2016 before the Notary. He has further pointed out that the affidavit-cum-declaration was also executed by the original accused and his family members on 18th June 2016. The same was produced before this Court in the aforesaid appeal proceedings. In view of the aforesaid settlement, the learned Single Judge of this Court, vide order dated 4th July 2016, had recorded the compromise arrived between the parties and had disposed of all the First Appeals. It was further recorded that the application for probation stood modified in terms of the compromise arrived between the parties. Learned advocate had further submitted that as recorded in the settlement deed dated 18th June 2016, the entire consideration amount towards relinquishment of the rights of the respective parties was acknowledged. In view thereof, there was no debt in existence on the date of the so-called cheque dated 5th July 2017 for a sum of Rs.1,69,16,666/-. It was further submitted that even on appreciation of the schedule of the payment, there is no

reference to the cheque bearing no.196319 dated 5th July 2017. According to him, the accused had beyond reasonable doubt established the fact and had rebutted the presumption that the applicant was not liable to pay any amount as mentioned in the so-called cheque dated 5th July 2017.

3.2 Based on such undisputed facts, he has further submitted that there is no iota of evidence available on record to establish that the original complainant was entitled to recover any amount from the present applicant as mentioned in the cheque. It was submitted that the Court below ought not to have drawn the presumption as contemplated under Section 118(a) read with Section 139 of the Act, 1881 in absence of any such evidence being brought on record. In this regard, learned advocate had referred to the so-called *samjuti karar* dated 2nd July 2016 to point out from page 54 that the reference is made to six cheques, however it does not include the disputed cheque bearing no.196319 dated 18th September 2017.

3.3 It was further submitted that even the Civil Suit filed by the respondent which was registered as Special Civil Suit No.397 of 2019 essentially praying for realization of the

aforesaid amount. It was further submitted that the said suit was dismissed vide order dated 6th October 2022 while accepting the application of the applicant under Order 7 Rule 11 of the Code of Civil Procedure. It was pointed out that in the aforesaid proceedings the Court has taken judicial note of the said *samjuti karar* dated 2nd July 2016 and had categorically held that such contract cannot be treated as valid contract in view of Section 23 of the Indian Contract Act, 1872. It was also held that once the settlement was arrived at between the parties in terms of agreement dated 18th June 2016, which was recorded by the learned Single Judge of this Court in an earlier round of proceedings, the subsequent so-called agreement cannot be treated as valid agreement. In fact, no cause of action lies for the parties to pursue the proceedings on such an agreement and therefore the suit was held barred by Order 7 Rule 11(a) and 11(d) of the Code. He has therefore submitted that in absence of any legally enforceable debt, the impugned judgment of conviction is required to be quashed and set aside.

3.4 In order to further substantiate his argument, learned advocate had referred to the evidence of the complainant who

in his cross-examination had admitted that the so-called agreements produced on record at Exhibit 19 and 21 are in respect of unaccounted money which is apparent from the glaring difference in the two figures of consideration appearing in the respective agreements. He has further invited my attention to the observations of the Appellate Court, more particularly, as recorded in para 10.13 of the impugned judgment, holding that there is no restriction or bar under Section 23 of the Indian Contract Act, 1872 for executing more than one agreement. Assailing the aforesaid finding of the Appellate Court, learned advocate had referred to Section 23 of the Indian Contract Act, 1872 along with the provisions of Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the “Act, 1881”). It was submitted that in order to attract the offence punishable under Section 138 of the Act, 1881, the essential ingredient which is required to be fulfilled is the fact that the debt or liability was towards "*legally enforceable debt and other liabilities*". He has therefore, submitted that if the purpose of the contract or agreement was not lawful and the same being admitted by the complainant, the transaction in question cannot be treated as one related to legally enforceable debt or

other liability in view of provisions of Section 23 of the Indian Contract Act, 1872 and Section 138 of the Act, 1881.

3.5 Learned advocate had placed reliance upon the judgment of Hon'ble Supreme Court in the case of **Dashrathbhai Trikambhai Patel vs.Hitesh Mahendrabhai Patel** reported in (**2023) 1 SCC 578** to contend that in order to attract an offence under Section 138 of the Act, 1881, the cheque i.e. dishonored must represent a legally enforceable debt on the date of maturity or presentation. It was also submitted that even for sake of argument, if the case of the original complainant with regard to execution of second agreement is to be accepted, the schedule of payment reproduced in the so-called *samjuti karar* dated 2nd July 2016 is read, the relevant date of 18th September 2017 relates to a payment of Rs.2,79,00,000/- whereas in the disputed cheque amount entered is Rs.1,69,16,666/-. It was further submitted that in view of Section 56 read with Section 15 of the Act, an endorsement was required to be made by recording the fact that part payment of the debt in cheque was made. It is only when such endorsement is made on the cheque, it can be used to negotiate the balance amount. According to the learned

advocate, in the earlier agreement dated 18th June 2016 produced before this Court in the First Appeal proceedings, the original complainant has acknowledged the fact of part payment of the amount and therefore if it was the case of the complainant that the remaining part of the amount was to be paid through the cheque, such an endorsement was required to be made in the cheque before negotiating for the balance amount. Once it is found that the endorsement was not made at the stage of presentation of the cheque, no offence punishable under Section 138 of the Act,1881 was attracted as the cheque does not represent a legally enforceable debt at the time of encashment.

3.6 Learned advocate had also placed reliance upon the decision of Hon'ble Supreme Court in the case of **John K Abraham versus Simon C Abraham** reported in **(2014) 2 SCC 236**. Referring to the ratio laid down therein, it was submitted that the expression "debt" has to be read as provided in the explanation appended to Section 138 which means a *"legally enforceable debt or other liabilities"*. Thus, drawal of a cheque in discharge of existing or past adjudicated liability is s*ine qua non* for attracting the offence

under Section 138.

3.7 The reliance was also placed on the decision of Hon'ble Supreme Court in the case of **G Pankajakshiamma versus Mathai Mathew (dead) through LRs** reported in **(2004) 12 SCC 83.** It was submitted that in absence of any books of accounts being produced, the Court had found the transactions of unaccounted amount as illegal and had thereby refused to pass any decree in favour of the party. It has been categorically observed that the Court cannot come to the aid of the party in an illegal transaction.

3.8 The reliance was also placed on the decision of the Hon'ble Supreme Court in the case of **M/s. Indus Airways Private Limited & Ors vs. M/s. Magnum Aviation Private Limited and Another** reported in **2014(2) GLH 161**, reiterating the principle that criminal liability under Section 138 would only arise where there exists a legally enforceable debt or other liabilities on the date of drawl of the cheque.

3.9 Lastly, learned advocate had placed reliance upon the judgment of Coordinate Bench of this Court in the case of **Shaikh Yusufkhan Hamidkhan versus State of Gujarat**

reported in **2021 (4) GLR 3121** to point out the settled principle with regard to presumption to be drawn in view of Section 139 of the Act. It was submitted that Section 139 of the Act, 1881 merely raises a presumption in regard to the fact that the cheque has been issued for the discharge of any debt and or any other liability, however, the existence of a legally recoverable debt is not a matter of presumption under Section 139 of the Act, 1881. Even otherwise, the presumption permissible to be raised under Section 139 of the Act, 1881 is rebuttable.

Submissions on behalf of Respondent- original Complainant :

4. Learned advocate Mr.Shiraj Shah Appearing for respondent no.2- the original complainant had vehemently objected to the aforesaid submissions made by the learned advocate for the applicant.

4.1 The learned advocate had invited my attention to the findings and reasons recorded by the learned Magistrate. He has further referred to and relied upon various documents viz. the Settlement Deed dated 18th June 2016 at Exhibit 19, the Affidavit-cum-Declaration dated 18th June 2016 at Exhibit 20,

the *Samjuti Karar* dated 2nd July 2016 at Exhibit 21, and the Declaration-cum-Affidavit dated 18th June 2016 at Exhibit 22.

4.2 Referring to the findings and reasons recorded by the learned Magistrate in paras 7.10 and 7.11, he has submitted that the learned Magistrate to arrive at a finding that there is no challenge to the aforesaid agreements at the instance of the accused and has for valid reasons has entertained complaint. He has therefore submitted that no error can be found with the approach of the learned Magistrate in absence of contrary evidence shown on record or any dispute being raised by the applicant. Appreciating the evidence of notary Shri Kishorbhai Mistry, who has been examined as a witness and his evidence being recorded at Exhibit 34, the Court has recorded a specific finding that the accused has not challenged the *Samjuti Karar* nor has disputed their signature on the aforesaid document. On the contrary, the accused has referred to and relied upon the aforesaid documents for the purpose of pressing the fact that the complainant had relinquished his right from the agricultural land. With such evidence on record, the learned Magistrate has noted that there is no reason to disbelieve the case of the complainant

about the execution of the aforesaid documents with respect to the agricultural lands. The learned Magistrate has further taken judicial notice of the schedule of payment reproduced in the *Samjuti Karar* at Exhibit 19, more particularly, the parties having agreed to pay Rs.2,79,00,000/- on 18.6.2017. The learned Magistrate has taken note of the fact that, as evident from the reading of the contents of the said agreement, the parties have agreed to make the payment by cheque or by cash. Though there is reference of few post-dated cheques, the fact that the disputed cheque was issued on 18th June 2017 cannot be disbelieved, as it relates to the date of payment of Rs. 2,79,00,000/- as agreed and reflected in the schedule. It has also transpired in the cross-examination of the complainant that one of the cheques issued by Mr. Nileshbhai has been encashed. This suggests that the accused had given one more cheque. Learned advocate had therefore submitted that the findings recorded by the Learned Magistrate is based on appreciation of evidence on record and in absence of any palpable error, perversity or jurisdictional error being pointed out in the judgment impugned, this Court may not interfere with the conviction.

4.3 On the issue of a legally enforceable debt, the learned advocate had drawn my attention to the findings and reasons recorded by the learned Magistrate in para 7.12 of the impugned judgment. It was pointed out that on appreciation of the evidence of the complainant and the aforesaid documents on record, the learned Magistrate has rightly held that the *Samjuti Karar* produced on record at Exhibit 19 does not get nullified or cannot be treated as against public policy as provided under Section 23 of the Contract Act. On the contrary, it establishes the fact that the cheque was issued towards the discharge of a legally enforceable debt. The learned advocate had further referred to Section 23 of the Contract Act and had submitted that neither of the eventualities stated in the said provision is applicable in the facts of the case. He has further submitted that document produced on record viz. Exhs. 19 to 22 have remained unchallenged and undisputed and in fact have been acted upon by the respective parties to some extent. On the contrary, the said documents suggest that it was a bilateral act of the parties and the parties have willingly entered into such a transaction. He has, therefore, submitted that merely because the *Samjuti Karar* was a notarized document or

subsequently entered after relinquishment of rights before the High Court or being not produced before the Appellate Court in appeal, are not any valid grounds to hold that the debt or liability incurred by the accused was a non-legally enforceable debt. On the contrary, the fact remains that as on date the validity of the document is not questioned in absence of any challenge being made to such document by the parties to the proceedings.

4.4 It was further pointed out that the learned Magistrate has rightly followed the principles laid down by the Hon'ble Supreme Court in the case of **Triyambake S Hegde vs. Sripad** reported in **(2022) 1 SCC 742.** According to the learned advocate, the nature of litigation would matter while considering the issue of legally enforceable debt.

4.5 The learned advocate had submitted that admittedly, the signature on the cheque has not been disputed. Though attempts were made by raising questions with regard to a difference in ink on the cheque, the same has not been substantiated later on by leading any cogent material on record by the accused. He had reiterated the fact that

admittedly, the validity or the execution of the various documents at Exhibits 19, 20, 21, and 22 are not challenged. In such circumstances, the parties cannot travel beyond the terms and conditions of the contract once the execution is not disputed. On the contrary, the complainant has examined a witness i.e. the notary before whom the said documents were executed. The said witness has supported the case of the complainant. He has therefore submitted that no perversity or any palpable error is proved by the accused which calls for interference of this Court in the present Criminal Revision Application. There being concurrent findings of facts and law, the impugned order of conviction may kindly be confirmed.

4.6 As regards the various judgments relied upon by the learned advocate for the applicant, the learned advocate had drawn my attention to the facts of the case of **Dashrathbhai Trikambhai Patel (supra)** to point out that the foundational facts were laid down by the applicant – original accused who in his cross examination had categorically mentioned that the he did not take any receipt of lending Rs.20 lakhs to the first respondent. The Court upon appreciation of evidence, had noted the respondent did not owe the amount as represented

in the cheque at the time of encashment of the cheque which the Court found was issued for security. Considering the provisions of Section 138 of the Act, the Court was of the view that in view of Section 56 read with Section 15 of the Act, 1981, the endorsement was required by recording part payment of debt in cheque. In the case of **John K Abraham (supra)**, the trial Court had acquitted the accused initially for the offence under Section 138 whereas the High Court reversed the order of acquittal and convicted the accused, in the process the High Court had awarded compensation of Rs.1.5 lakhs. The Hon'ble Supreme Court while appreciating the contention raised by the complainant, upon appreciation of the evidence noted that contradictions in the evidence of the complainant as to who had written the cheque. The Hon'ble Supreme Court further noticed that the aforesaid contradictions recorded by the Trial Court were brushed aside by the High Court without recording any reasons. It is in the background of such facts of the case the Court had held that in order to draw a presumption under Section 118 read along with Section 139 of the Act, the burden was heavily upon the respondent- complainant to show that he had required funds for having advanced the money to the accused. The Hon'ble

Supreme Court, therefore, having noted the perversity in the judgment of the High Court, had set aside the same and had allowed the appeal. In the case of **M/s.Indus Airways (supra)**, the facts suggest that post-dated cheques were issued by the accused. The question arose as to whether the post-dated cheques issued as advance payment in respect of the purchase order which could be treated as the discharge of a legally enforceable debt or other liabilities and further as to whether the dishonour of such cheque would amount to an offence punishable under Section 138 of the Act, 1881. The learned advocate had further submitted that considering the facts of the case, the liability had in fact crystallized on the day when the First Appeals were disposed of recording the compromise, inasmuch as the accused has agreed to make part payment of the amount towards consideration for relinquishment of the rights of the complainant and others in the lands in question. Hence, there was no question of the liability having not crystallized on the date of issuance of the cheque. He has therefore submitted that the aforesaid judgment would not be applicable in the facts of the case. As regards the judgment relied upon by the learned advocate in the case of G**. Pankajakshiamma (supra)** is concerned, it

was pointed out that the matter relates to the Kerala Money Lenders Act and the suit was filed based on a promissory note. Admittedly, the suit for recovery of dues was based on illegal transactions involving a chit fund transaction. It is in the background of such a factual scenario, the transaction in question was found to be illegal and therefore was rightly held as not enforceable in the eye of law. Lastly, in the case of **Shaikh Yusufkhan Hamidkhan (supra)**, it was pointed out that the Court, upon appreciation of the record, had noted that there was nothing on record produced by the complainant to suggest that the notice given before lodging the complaint was received by the accused. Even in cross-examination, the complainant had admitted the aforesaid fact. It is in view of such a statement being made by the complainant and in the absence of any evidence being brought on record, the Court had arrived at a conclusion that the offence under Section 138 was not committed by the accused. On the aspect of evidence with regard to a legally enforceable debt, the learned advocate had submitted that cogent material has been produced on record in the present case. He has, therefore, urged this Court to dismiss the present Criminal Revision Application.

Analysis :

5. I have heard learned advocates appearing for the respective parties. I have also carefully considered their submissions in light of the evidence on record. After the arguments were concluded, though the relevant documents are forming part of the revision application, the original records and proceedings were called for from the respective Courts. I have carefully gone through the entire record.

6. Considering the submissions made by learned advocates appearing for the respective parties and having appreciated their submissions in light of the findings and reasons assigned by the Courts below, the short question which arises for consideration of this Court in the present revision application is as to whether the learned Magistrate as well as the Appellate Court has committed any palpable error or has acted dehors the provisions of law or any jurisdictional error has been committed by passing impugned judgment and order of conviction so as to invoke revisional jurisdiction under Section 397 of the Code of Criminal Procedure, 1908 ?

7. It is required to be noted that the present Revision

Application arises out of the complaint lodged under Section 138 of the Negotiable Instruments Act, 1881. At the outset, it would be appropriate to revisit the statement and object of the Negotiable Instruments Act, 1881, viz. "*to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficiency of funds in the accounts or for the reason that it exceeds the arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers.*" The Courts on various occasions, bearing in mind the aforesaid statement of objects and reasons of Act 66 of 1988, have formed an opinion that the provisions of the Act intend to restore the credibility of the cheques as a trustworthy substitute for cash payment and to promote a culture of using cheques.

7. The Hon'ble Supreme Court in the case of **Sanjabij Tari vs. Kishore S. Borcar**, **Neutral Citation: 2025 INSC 1158,** taking note of the aforesaid statement and object, has further observed that by criminalizing the act of issuing cheques without sufficient funds or for other specified reasons, it was intended to promote financial discipline, discourage

irresponsible practices, and to allow for a more efficient and timely resolution of disputes compared to the previous pure civil remedy which was found to involve the payee in a long drawn-out process of litigation.

8. Keeping in mind the aforesaid object of Act 66 of 1988, if one looks at the scheme of the Act, it has been ruled out that once the execution of a cheque is admitted, the presumption under Section 118 of the Act,1881 i.e. the cheque in question being drawn for consideration, and the presumption under Section 139 of the Act, 1881 i.e. the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability, arises against the accused/drawer of the cheque. The aforesaid view has been expressed by the Hon'ble Supreme Court in the case of **Bir Singh vs. Mukesh Kumar**, reported in **(2019) 4 SCC 197**. The three-Judges Bench of the Supreme Court has held that the presumption contemplated under Section 139 of the Act, 1881 is a rebuttable presumption. However, the initial onus of proving that the cheque is not in discharge of any debt or other liability lies on the accused/drawer of the cheque. Later on, in the case of **APS Forex Services Pvt. Ltd. vs. Shakti**

International Fashion Linkers and Ors., reported in **(2020) 12 SCC 724**, the Court observed that once the accused have rebutted the presumption, the onus would shift back to the complainant to prove his case.

9. Bearing in mind the aforesaid legal position, the argument of the learned advocate for the applicant with regard to the complainant having failed to establish that the cheque was towards a legally enforceable debt, is required to be rejected. I have given careful thought to the judgments relied upon by learned advocate for the applicant; however, in view of distinguishing facts pointed out by learned advocate for the respondent, the same are not found applicable in the facts of the case. It is required to be noted that the complainant had issued a legal notice dated 29th July 2017, which is produced on record at page 63, wherein he has categorically referred to the past litigation, the subsequent compromise arrived upon and the total amount of consideration agreed by the respective parties towards such compromise. Indisputably, the parties have entered into a settlement in respect to the claim made by the accused in the agricultural lands. As against the relinquishment of their rights in the disputed

lands, the accused and their family members have agreed to pay consideration. Further, it is required to be noted that, as admitted by the accused, there is no challenge to the various documents i.e. the settlement deeds and the affidavit-cum-declaration as produced on record at Exhibit no. 19, 20, 21, and 22, being executed by them. On the other hand the complainant has examined the notary as a witness who has supported the case of the complainant. With such cogent material being brought on record, in my view, the complainant has fairly proved his case that the cheque was issued towards the debt/liability incurred by the accused. As rightly noted by the learned Magistrate, the schedule of payment reproduced in the *Samjuti Karar* dated 2nd July 2016 clearly suggests that the parties have negotiated a settlement for a consideration of Rs.11,31,00,000/-. It further transpires from item no.5 that out of the aforesaid total amount of consideration, the accused had agreed to pay Rs.2,79,00,000/- on 18th June 2017. The accused, being one of the signatory parties to the document, has agreed to pay Rs.2,79,00,000/-. With such material dates being incorporated in the schedule of payment, if one looks at the date of issuance of the disputed cheque, which is 18th June 2017 for an amount of

Rs.1,69,16,666/-, there is no reason to disbelieve the case of the complainant that the cheque was issued towards the aforesaid transaction. It is also required to be noted that at the stage of settlement before the learned Single Judge of this Court in the First Appeal, the parties have appeared and had agreed to relinquish their rights in the respective lands subject to the realization of the aforesaid amount. The learned Single Judge, upon verifying the aforesaid fact, had taken on record the original copy of the agreement recording the compromise and had further passed the order modifying the order under challenge in terms of the compromise. It is further required to be noted that a condition was incorporated in the settlement deed conferring a right upon the complainant and his family members to initiate appropriate proceedings for the recovery of such amount. Also, the argument by the applicant of non compliance of provisions of section 56 of the Act, has been raised for the first time in present revision. On careful appreciation of the impugned judgments as well as the evidence of the original complainant, there is nothing on record to show that such defense of part payment against agreed consideration was raised. In absence of any evidence worth establishing part payment of the

amount of disputed cheque, there does not arise any reason for non compliance of provisions of section 56 of the Act. If that was the case, the accused would have promptly replied to legal notice by pointing details of part payment. With specific date of realization of the amount being agreed bilaterally and the disputed cheque being issued on the specified date, in the absence of any contradiction being brought on record, the complainant has proved his case in view of the recital that the accused had agreed payment of amount on schedule date , which had become due and payable and cheque was issued towards the debt/liability incurred by the accused being one of the signatories to such compromise deed as well as the affidavit-cum-declaration.

10. As regards the issue of the transaction in question being a legally enforceable debt, it would be appropriate to refer to the aforesaid decision of the Hon'ble Supreme Court in the case of **Sanjabij Tari (supra)**. Before the Hon'ble Supreme Court, the question arose as to once the execution of a cheque is admitted, whether the presumption under Section 139 of the NI Act that the holder of the cheque received the said cheque in discharge of a legally enforceable debt or liability

arises against the accused or not. The Court observed that the earlier view taken by the two Judges Bench of the Hon'ble Supreme Court in the case of **Krishna Janardhan Bhat vs. Dattatraya G. Hegde [(2008) 4 SCC 54**] has been set aside by a three-Judges Bench in the case of **Rangappa vs. Sri Mohan [(2010) 11 SCC 441**]. The Court deprecated the approach of the Courts below to not give effect to the presumptions under Sections 118 and 139 of the Act,1881 by observing that such an approach was contrary to the mandate of Parliament. The Hon'ble Supreme Court has disagreed with the judgment of the Kerala High Court in the case of **P.C. Hari vs. Shini Varghese and Anr**. (**2025 SCC OnLine Ker 5535**), wherein the Court had refused to extend the presumption under Section 139 of the Act by holding that the debt created by a cash transaction above Rs. 20,000/- was in violation of the provisions of Section 269 SS of the Income Tax Act, 1961, and hence was not a "legally enforceable debt" unless a valid explanation was offered. The Hon'ble Supreme Court observed that any breach of Section 269 SS of the Income Tax Act, 1961, is subject to a penalty only under Section 271D of the Income Tax Act, 1961. The Court further observed that neither of the aforesaid provisions states that

such a transaction in breach thereof will be illegal, invalid, or statutorily void. The Court, therefore, held that any violation of such aforesaid section of the Income Tax Act, 1961, would not render the transaction unenforceable under Section 138 of the NI Act, 1881 or rebut the presumption under Sections 118 and 139 of the NI Act, 1881.

11. Applying the aforesaid principles in the facts of the case, in the absence of any challenge to the documents produced on record at Exhibits 19, 20, 21, and 22, merely because the parties to the aforesaid transactions have after entering into a compromise before the High Court, has entered into a subsequent transaction agreeing for consideration amount more than what was agreed before the High Court, would not render the transaction illegal. In order to appreciate the contention of the learned advocate for the applicant, if one looks at the provisions of Section 23 of the Contract Act, it would be too far to hold that the aforesaid transaction was against public policy and therefore to be treated as an illegal document in the eyes of law. As regards the validity of the transaction, in view of the provisions of Section 17 of the Registration Act, it was required to be compulsorily registered

where the amount of consideration was more than Rs.100/- as against the relinquishment of rights in immovable property is concerned. However, the mere fact of the document being not registered as provided under the aforesaid provision, would not render such document invalid for the purpose of its enforcement. At the most, the burden would be on the parties relying upon such a document to establish the same as per the provisions of Evidence Law so as to read it as evidence. The judgments of the Hon'ble Supreme Court suggest that, in fact, even an unregistered agreement can be looked into for the limited collateral purposes. Recently, the Hon'ble Supreme Court in the case of **MURUGANANDAM ...APPELLANT(S) VERSUS MUNIYANDI (DIED) THROUGH LRS, Neutral Citation : 2025 INSC 652, [CIVIL APPEAL No(s). 6543 OF 2025 ARISING OUT OF SLP (C) No(s). 10893 OF 2021],** has permitted the unstamped and unregistered agreement to be read as proof of oral agreement in view of proviso to section 49 of the Registration Act and principles laid down in the case of in **S. Kaladevi v. V.R.Somasundaram**, reported in **(2010) 5 SCC 401**. The Hon'ble Supreme Court has held that an unregistered document may be received as evidence of a contract in a suit

seeking specific performance. The relevant portion from the decision as relied upon is reproduced hereunder :

> *"12. The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. The proviso, however, would show that an unregistered document affecting immovable property and required by the 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of the proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs 100 and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by a registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of 1908 Act."*

12. The Andhra Pradesh High Court in **Sardar Darshan Singh v. Sardar Ram Sing and another, 2004 (6) ALT 217**, has carved out the three exceptions which can be considered in view of proviso to section 49 of the Registration Act. The Court thus observed as under :

> *"7. A mere perusal of the said proviso shows that an exception is carved out from the rigor of Section 49 which ordains that the document which is required to be registered under Section 17 of the Registration Act shall not be received as evidence of any transaction affecting such property or conferring such power unless it has been registered. The exception applies to three categories, namely, (i) the document may be received as evidence of a contract in a suit for specific performance; (ii) as evidence of part performance of a contract for the purpose of Section 53-A of the Transfer of Property Act, 1882; and (iii) as evidence of any collateral transaction not required to be effected by registered instrument. In respect of these three categories of transactions, notwithstanding the fact that the document which is required to be registered has not been registered and, therefore, shall not be received as evidence, can be received as evidence."*

13. Thus, applying the aforesaid legal principles in the facts of the case, there is no legal bar in accepting the unregistered *samjuti karar* dated 2nd July, 2016 as evidence and for

enforcement of legal rights as such documents can always be looked into for the collateral purposes, like the amount agreed to be paid, in view of proviso to section 49 of the Registration Act. The said *Samjuti karar* stands fortified in view of the affidavit cum declaration dated 18th June, 2016 (page no. 58), filed by the accused. As regards, black money unaccounted transaction alleged by the advocate for the accused is concerned, the same is meritless as it is required to be noted that such payment has been agreed by way of cheque which is going to be through bank on record.

14. For the foregoing reasons, keeping in mind the settled principles with regard to the exercise of revisional jurisdiction, this Court in the absence of any perversity, is not inclined to upset the concurrent factual findings recorded by the Courts below. This Court is of the view that there is no good ground made out to re-analyze and re-interpret the evidence on record.

15. Consequently, this Court is of the view that in the absence of any perversity or palpable error or jurisdictional error being proved and established by the applicant, this Court is

not inclined to exercise its revisional jurisdiction to interfere with the impugned judgment and order of conviction and sentence imposed by the learned Magistrate as well as by the learned Appellate Court. The revision application therefore fails and is hereby dismissed.

16. In view of the dismissal of the main revision application, in the miscellaneous application filed by the original complainant, seeking modification of the condition of furnishing undertaking instead of bank guarantee, becomes inconsequential in view of impugned judgment and order passed by courts below being upheld. In view thereof, the original complainant shall be at liberty to withdraw the 10% of the cheque amount lying with the concerned court unconditionally. The Criminal Miscellaneous Application stands disposed, accordingly.

17. However, since the applicant is convicted and is required to undergo sentence, the accused is directed to surrender before the Jail authority within a period of four weeks from receipt of certified copy of this Judgment. In case of failure of applicant to surrender, it shall be open for the trial court to

issue Non Bailable warrant for securing presence of accused. Registry is directed to communicate the writ of this order to concerned court alongwith record and proceedings.

sd/-

(NISHA M. THAKORE,J)

RATHOD KAUSHIKSINH