IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION (AGAINST ACQUITTAL - NEGOTIABLE INSTRUMENT ACT) NO. 469 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE NISHA M. THAKORE

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Approved for Reporting	Yes	No

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CHIRAGBHAI JAGDISHCHANDRA SHAH
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR D V KANSARA(7498) for the Applicant(s) No. 1
MR R G DWIVEDI(6601) for the Applicant(s) No. 1
MR. YUVRAJ BRAHMBHATT ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 2

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CORAM:**HONOURABLE MS. JUSTICE NISHA M. THAKORE**

Date : 06/07/2026

ORAL JUDGMENT

1. The present application is filed at the instance of the original complainant under Section 397 read with Section 401 of the Code Criminal Procedure, 1973, being aggrieved and dissatisfied with the judgment and order dated 26.02.2019, passed by the learned 7th Additional Sessions Judge, Vadodara in Criminal Appeal No. 2 of 2018. By the said impugned judgment and order, the learned Sessions Judge has quashed and set aside the judgment and order, dated 05.12.2017, passed by the learned 10th Additional

Chief Judicial Magistrate, First Class, Vadodara in Criminal Case No, 26783 of 2015 convicting the present applicant-original accused for the offence punishable under Section 138 of the Negotiable Instruments Act. Hence, the present Revision Application is by the original complainant challenging the order of acquittal recorded by the learned Sessions Judge for the offence alleged.

2. Considering the grounds raised in the Revision memo and the submissions made by learned advocate for the applicant-original complainant, the learned Single Judge of this Court vide order dated 02.07.2019, was pleased to admit the Revision Application. The matter was notified under special assignment of old matters and considering the grounds raised in the Revision Application, the Registry of this Court was directed to call for the record and proceedings of the Criminal Case as well as of Criminal Appeal.

3. Learned advocate Mr. R.J Dwivedi has appeared on behalf of the applicant. Despite service of notice of admission which is reported to be duly served upon the respondent No.2-original accused, for the reasons known, the accused has chosen not to appear and contest the present application.

4. Learned Addl. Public Prosecutor Mr. Yuvraj Brahmbhatt has appeared for the respondent No.1- State.

5. Learned advocate appearing for the applicant has vehemently assailed the impugned judgment and order passed by the Appellate Court reversing the judgment and order of conviction passed by the learned Magistrate thereby acquitting the respondent No.2 herein.

5.1 The attention of this Court was invited to the case of the complainant as pleaded in the original complaint. It was submitted that the accused and the complainant were known to each other as even in past, the accused had purchased industrial oil from the complainant. It is in view of the aforesaid business relations, the complainant had trusted the accused and had given him 50 boxes of Castrol Active (900 ml), 40 boxes of Castrol 904t-1 liters and 40 boxes of Castrol Active – 1 liter of goods worth Rs. 5,08000/- on 09.12.2014. The accused had assured the complainant to make payment of the goods so purchased within a period of 10 days by further assuring to sell the aforesaid goods. It was categorically pleaded that delivery of goods was immediately done to the accused. Despite completion of period of 10 days, the accused had failed to make any payment and, therefore, the complainant had tried to contact him on his phone. The attempt was made to contact him at his shop and by leaving messages. At one stage, the accused had responded to such messages once again assuring to make the payment of the aforesaid outstanding amount. It was submitted that out of Rs. 5,08,000/-, the amount of Rs. 33,000/- was paid by the accused and the remaining amount of Rs. 4,75,000/- was assured to be paid after festival of Uttarayan. The complainant has bonafidely trusted the accused and had contacted the accused after Uttarayan whereby the assurance was given to make payment of the remaining outstanding amount by the end of month of March or in the first week of April. The complainant had thereafter, contacted the accused on 05.04.2015 whereby the accused had handed over him a cheque of sum of Rs. 4,75,000/- issued by him under his signature.

5.2 On 13.04.2015, the complainant had submitted the aforesaid cheque, however, the same was returned back on 15th April 2015 by the concerned bank with the endorsement of insufficient funds. The complainant was, therefore, constrained to issue legal notice through his lawyer on 20.04.2015, thereby instructing the accused to forthwith make payment of outstanding amount. Despite service of notice upon accused on 22.04.2015, the accused had failed to make payment of the remaining amount. The complainant, thus, being duped by the accused, the cause of action arose for the complainant to approach the Court of learned Magistrate for lodging of the complaint for the offence punishable under Section 138 of the N.I Act, 1881.

6. Referring to the aforesaid case pleaded by the complainant, learned advocate had invited my attention to the issues framed by the learned Magistrate and had further referred to the findings and reasons recorded. It was submitted that the learned Magistrate has closely examined the original complaint, the deposition of the complainant and the relevant documents brought on record and has rightly found the complaint maintainable against the accused. It was submitted that the learned Magistrate has rightly noted that no challenge has been made by the accused to the deposition of the complainant. A defence has been raised by the accused in the cross-examination that a blank cheque was handed over to the complainant and the details have been in-corporated later on. As regards the defence raised by the accused on having taken away the cheque under duress and coercion is concerned, the learned Magistrate had noted that the accused had not brought on record any material in the nature of any application or complaint in this regard being submitted before any Police Station. On close appreciation of the contents of the notice cum reply, the learned judge noted that there is no reference to any specific date, time or place stated by the

accused about such incident. On the contrary, the learned judge has appreciated the disputed cheque at Exh. 19 and has found that the name, the amount mentioned in figure and words, are found to be incorporated using one pen and the hand-writings are also found to be comparatively same merely because the date entered in the cheque differs in ink may not be treated as a valid ground for believing the defence of the accused. He has further pointed out that as regards the defence raised by the accused of non-production of documents like bill, delivery challan to establish the element of the legally enforceable debt is concerned, the learned judge has rightly discarded the same as no such defence was taken by the accused at the first instance in the reply cum notice given by him. On the contrary on close appreciation of such reply cum notice given by the accused, the further statement of the accused recorded under Section 313 of the Code, clearly suggest that different defences have been raised at different stages by the accused. Learned advocate had further pointed out that even the bare appreciation of the cross-examination of the complainant, there is no material contradiction being brought on record to conclude that there is rebuttal of the presumption which arose under Section 118 (a) and Section 139 of the Act of 1881.

7. Having appreciated the entire evidence on record, the

learned Magistrate has rightly arrived at a conclusion that the accused had failed to rebut the presumption as envisaged under Section 139 of the Act and has rightly convicted the accused for the offence punishable under Section 138 of the N.I Act by imposing sentence of 3 months simple imprisonment and awarding compensation under Section 357(3) of the Code of Criminal Procedure, 1973.

8. Assailing the impugned order of conviction, learned advocate has pointed that the learned Sessions Judge committed grave error to take into consideration the reference of the term security which was otherwise inadvertently reflected in the legal notice issued by the complainant at Exh. 21. It was submitted that a young lawyer representing the complainant with a bare experience of practice, had drafted the legal notice and a reference was made to the term security cheque. It was further submitted that the learned Sessions Judge ought to have appreciated the overall evidence on record as borne out right from the inception of giving legal notice at Exh. 21 followed by the complaint at Exh. 1 followed by the verification of the complainant as recorded by the learned Magistrate at the stage of lodging of complaint and the deposition of the complainant. Inviting my attention to the findings and reasons recorded by the learned Sessions Judge, it was submitted that the defence of security cheque being

misused was later on raised at the stage of cross-examination inasmuch as the complainant was called upon to produce any evidence related to the transaction in question. It was pointed out that during the course of cross-examination, the complainant has produced on record rojmel at mark 25/1. The learned judge has thereafter taken into consideration the admission of the complainant who in his cross-examination has admitted the fact that legal notice produced on record at Exh. 21 was issued under his instruction. The learned judge in absence of material in the nature of invoices, bills and delivery challans with regard to transaction of goods worth Rs.5,0,8000/- being sold to the accused; being not brought on record, except for the handwritten rojmel (Mark 25/1), has drawn conclusion that the accused had rebutted the presumption raised in favour of the complainant under Section 139 of the Act, that the accused had given cheque towards legally enforceable debt or liability. In light of the same, the onus had shifted upon the complainant to prove his case beyond reasonable doubt. Learned advocate had submitted that merely because in the legal notice dated 08.04.2015 (Exh. 21), the lawyer of the complainant has stated that the cheque is issued towards security, the learned Sessions Judge ought not to have arrived at a conclusion that the cheque issued towards security cannot be said to be a legally enforceable debt under Section 138 of the Act. He had submitted that the legal position on the aforesaid aspect is otherwise. In support of his submissions, learned advocate has placed reliance upon the the following decisions of the Hon'ble Supreme Court in the case:

(1) **T. Vasanthakumar Vs. Vijaykumari (2015) 8 SCC 378.**

(2) **Sampelly Satyanarayana Rao Vs. Indian Renewable Energy Development Agency Ltd. (2016) 10 SCC 458.**

(3) **Sripati Singh (since deceased) through his son Gaurav Singh Vs. State of Jharkhand and anr (2022) 18 SCC 614.**

9. Referring to the aforesaid decisions, learned advocate has submitted that merely the fact that the cheque was issued as security itself, would not take away the element of legally enforceable debt, if otherwise, it exists so as to attract the offence punishable under Section 138 of the Act.

Learned advocate has, therefore, urged this Court to quash and set aside the impugned judgment and order passed by the learned Sessions Judge recording the acquittal of the present respondent No. 2-original accused for the offence alleged.

10. Learned advocate had also invited my attention to the evidence of the complainant as well as the further statement

of the accused recorded under Section 313 of the Code. Referring to the provisions of Section 118 and 139 of the Act, it was submitted that once the signature on the cheque is not disputed, the Trial Court has rightly drawn presumption in favour of the complainant and had shifted the onus on the accused to prove his defence. It was submitted that no evidence worth has been produced on record by the accused. On the contrary, it is an undisputed fact that out of total transaction of Rs. 5,08,000/-, the accused had repaid amount of Rs. 33,000/-. The aforesaid fact can be borne out from the cross-examination of the complainant as responded in terms of the suggestion put forward by the learned counsel for the accused. It was also pointed out that apart from the rojmel, the applicant has also produced on record the screen shots of messages signed by the accused to the complainant which clearly establish the transaction having taken place between the parties. With such circumstances being brought on record may be in the form of rojmel, which is though not admitted as evidence, the element of legally enforceable debt has been proved by the complainant. He has, therefore, urged this Court to reverse the order of acquittal and to uphold the order passed by the learned Magistrate convicting the accused with further directions of compensation to be awarded to the complainant.

11. I have heard the learned advocates for the applicant-original accused. I have carefully considered the argument in the light of the findings and reasons assigned by the learned Magistrate as well as learned Sessions Judge. I have carefully perused the record, more particularly, the evidence brought on record as well as the guiding principles laid down by the Hon'ble Supreme Court in the judgments relied upon during the course of hearing. In order to appreciate the aforesaid arguments of learned advocate for the complainant, it would be appropriate to take into consideration the case of the complainant as pleaded in the original complaint. It is stated that the complainant is engaged in business of selling industrial oil and the accused in past used to purchase the industrial oil from the complainant. On 09.12.2014, the complainant claims to have sold the industrial oil worth Rs. 5,08.000/- to the accused. The accused had at that stage assured the complainant that he shall sell the goods within a period of 10 days and shall thereafter make payment of the goods so purchased. With such assurance of the accused, the complainant had relied upon the accused and had delivered the goods to the accused on credit. It is further contended that on various occasions, the demand was raised by the complainant for the payment of the aforesaid outstanding amount and responding to such demand, the accused had paid part of sum of Rs. 33,000/- to the complainant with further assurance that the remaining amount of Rs.

4,75,000/- shall be paid by him after the festival of kite flying. It was also assured that the accused is in the process of availing cash credit facility from the bank and shall soon pay him the remaining amount viz by the end of month of March or first week of April. It is further contended that the complainant had once again approached the accused on 05.04.2015 and the accused on his own had handed over the cheque for sum of Rs. 4,75,000/-. The complainant had deposited the said cheque on 13.04.2015 and the concerned bank had returned back the said cheque on 15.04.2015, with endorsement 'funds insufficient'. It is in light of these circumstances, it is pleaded that the complainant was constrained to initiate the legal proceedings whereby the demand was raised by issuing legal notice dated 20.04.2015, through his lawyer. The accused had though received such notice on 22.04.2015, however, had failed to make payment outstanding dues of remaining amount within the prescribed time period. The complainant had, therefore, approached the Court of learned Magistrate by lodging the complaint on 20.05.2015 for the offence punishable under Section 138 of the N.I Act, 1881.

12. Now, the core contention which has been raised by the learned advocate for the applicant-original complainant before me is that the learned Sessions Judge failed to

consider the issue of disputed cheque being given as security. Before considering the aforesaid principal argument, it would be appropriate to revisit the guiding principles laid down by the Hon'ble Supreme Court **Sampelly Satyanarayana Rao (supra).** In the aforesaid decision, the crucial point which arose for consideration, before the Hon'ble Supreme Court, in light of the arguments of the accused having issued post dated cheques as security for payment of loan installment, was whether the cheque represents the discharge of existing enforceable debt or liability or whether it represented advance payment without there being any subsisting liability. Considering the nature of transaction as evident from terms of loan agreement, the Court noticed that the loan amount was disbursed and as per agreement, the installments had fallen due on the date of issuance of cheque. The Court, thus, had arrived at a conclusion that the dishonour of such cheque would fall under Section 138 as undoubtedly the cheque represented the outstanding liability. Having noted the aforesaid principles, the aforesiad decision clarified the legal position that merely because the cheque is issued towards security purpose as described in contract itself is not sufficient. In other words in case of dishonour of such cheque, to attract the offence under Section 138 of the Act, the cheque issued should relate to the existing liability as on date of its issuance.

13. Keeping in mind the aforesaid principles, I have closely examined the findings and reasons assigned by the learned Sessions Judge. The learned Sessions Judge has considered the oral as well as written arguments of both the sides and carefully appreciated the evidence on record. The learned Sessions Judge has thereafter, looked into the relevant statutory provisions under Section 138 and 139 of the Act and has also referred to various authorities of Hon'ble Supreme Court on the aspect of proceedings to be followed more particularly the discharge of burden to dislodge presumption. Keeping in mind the principles of law laid down, the learned judge has considered the entire evidence of the complainant and has noted that the complainant has admitted in his cross-examination that in legal notice dated 08.04.2015, (Exh. 21) was given by his lawyer to the accused wherein, it is stated that the cheque is issued towards 'security'. In order to appreciate the aforesaid controversy the learned Sessions has further considered the specific defence raised by the accused in his reply given to legal notice explaining that "the accused had filled up the details except date and sign of the cheque given as security to the complainant", as stated in para 6 of Exh. 21. Having noted the aforesaid admission on the part of the complainant, the Court has straight away drawn conclusion that the cheque was given towards a security. It cannot be said that it was given for 'legally enforceable debt' so as to attract the offence under Section 138.

14. Having noted the aforesaid reasons assigned by the learned Sessions Judge, as rightly submitted by learned advocate for the applicant-original complainant, the Court was expected to appreciate the overall evidence on record in order to find out the actual nature of transaction so as to appreciate the defence raised by the accused. Though, it is argued by learned advocate for the applicant-original complainant, that no such defence was raised in the cross-examination of the complainant, in my view there may not be any direct question being put to the complainant that the cheque was handed over as security cheque and not towards legally enforceable debt. Having appreciated the entire evidence of the complainant, the defence counsel has on various occasions challenged the nature of transaction by harping on the foundational facts as regards issuance of cheque, the proof of existence of the outstanding dues, the non-production of vital documents like invoices, bills, delivery challans. Even from the record, it transpires that the date of issuance of cheque (Exh. 19) appears as 13.04.2015 and on the same day, the accused had infact issued legal notice upon the complainant which is produced on record at Exh. 22 suggest that the complainant had entered into the house of the accused unauthorisedly and had coerced him to make payment. It is stated that the complainant had approached his house in early morning hours at 5:00 and had used abusive words by raising

demand of money. It is alleged that despite no amount being due, the accused was compelled to sign across blank cheques (disputed cheque) in which figure of Rs. 4,75,000/- was entered by the complainant. The accused had therefore, cautioned the complainant by issuing legal notice thereby bringing to his notice about instructions of stop payment of such cheque. It was also cautioned to not to undue harass the accused and to avail appropriate legal remedy by proving his case of so called dues by giving cogent evidence.

14.1 Interestingly, it is required to be noted that the disputed cheque of 13.04.2015, (Exh. 19) was deposited before the concerned Bank as per the case of the complainant on 15.04.2015, which has been returned back by the concerned bank by issuing memo on 15.04.2015 with the reason endorsed 'funds insufficient' (Exh. 20). It is further required to be noted that the aforesaid legal notice dated 13.04.2015 (Exh.22) addressed by the accused was responded by issuing counter notice on 18.04.2015, by the complainant, thereby seeking payment of the amount of Rs. 4,75,000/- within a period of 3 days from the date of receipt of such notice. The said reply cum statutory notice dated 18.04.2015, has been produced on record at Exh. 21. As rightly noted by learned Sessions Judge in para 6, the complainant who has instructed the lawyer has categorically stated that the cheque was issued as security without any objection. It is also required to be noted that the aforesaid notice was duly served upon the accused. The accused had responded to such legal notice. The copy of which has been produced on record and admitted as Exh. 15. The bare reading of the contents of the aforesaid reply reiterates the defence taken by the accused about the disputed cheque being taken under threat and the stop payment instructions being issued. It is also stated that the blank cheque with sign of the accused was forcefully taken away by the complainant. The accused had also disputed about any outstanding dues and the transaction in question as alleged in the legal notice.

15. Having noted the aforesaid defence raised by the accused in his reply to the legal notice, it is borne out that the accused had essentially challenged the existence of 'legally enforceable debt" and the issuance of cheque towards such debt.

16. In view of the aforesaid evidence on record, it cannot be said that the complainant has been able to justify his case that the cheque was issued towards the alleged transaction. Having closely appreciated the entire evidence of the complainant in light of the aforesaid defence raised by the accused, it is required to be noted that during the course of the cross-examination specific question was

raised by the counsel of the defence to the complainant about the contents of the notice produced on record at Exh. 21. Responding to such suggestion, the complainant has fairly conceded to the fact that instructions were issued by the complainant while issuing such notice. He has also agreed to the suggestion about contents of para 7 in Exh. 21 of holding necessary evidence as proof of due amount. He has also agreed to the suggestion that such notice was signed by him as well as by lawyer after reading the contents. He has also admitted to the suggestion that he has not referred to the date on which the cheque was returned back. He has also admitted to the suggestion that in the aforesaid notice it is stated that the cheque was given towards security. It is thereafter, that he has agreed to the suggestion that he has not produced any documents acknowledging the fact of goods being handed over to the accused. In his further cross-examination, he has stated voluntarily that he is holding bills and necessary entries are maintained by him in his rojmel. He has also admitted to the suggestion that book of rojmel is lying in his custody. He has also admitted that in the past various transactions have been taken place between the parties. He has also admitted that except for the present transactions no entry or past transactions has been entered in the rojmel. He has agreed to the fact that he is well-versed with rojmel.

16.1 It is required to be noted that the aforesaid cross-examination of the complainant was recorded on 22.07.2017. The record further suggest that pursuant to the earlier request for adjournment, the complainant had produced on record the rojmel book by giving application seeking production of such documents at Exh. 24 which is submitted on 22.07.2017, along with the list at Exh. 25. The copy in the form of handwritten book of rojmel has been produced on record. It is required to be noted that the aforesaid document has not been admitted as an evidence and has maintained on record as mark 25/1. As against the aforesaid evidence of the complainant, the further statement of the accused is recorded under Section 313 of the Code wherein the accused has denied the alleged transaction with the complainant. He has denied the fact that the so called cheque has been issued towards any debt. He has pleaded not to be guilty of the alleged offence and has submitted that as wrong case has been raised against him.

17. With such evidence on record, in my view no error can be found with the approach of the learned judge in shifting the onus on the complainant to prove his case beyond reasonable doubt. Apart from raising the probable defence of cheque being taken as security, the accused has brought on record a valid defence disputing the existence of any

debt. Admittedly, except for the handwritten rojmel produced on record, no other cogent material in the nature of bills, invoices, ledger book acknowledging the factum of the alleged transaction has produced on record. Merely because the accused has pursued the matter forward after issuing instructions of stop payment by approaching the concerned Police Station, may not be sufficient reason to disbelieve the case of the accused of cheque being misused by the complainant.

18. In order to appreciate the case of the complainant I have carefully appreciated the contents of rojmel (Mark 25/1). The extract of the rojmels more particularly, internal page No.54/18 is not found in sync with the alleged transaction as stated in complaint. The reference to the quantity of goods alleged to have been delivered, as against the amount outstanding and the part payment of Rs. 33,000/- is not indicated in the aforesaid extract page No. 54/18. At the same time, it is also required to be noted that the complainant in his cross-examination has admitted to the fact that there are blank papers appearing in the rojmel. Having appreciated the entire evidence on record in light of the findings and reasons recorded by the learned Sessions Judge, no error can be found with the conclusion drawn by the learned judge that the onus has shifted on the complainant to prove his case beyond reasonable doubt.

19. At this stage, it is required to be noted that in the case of ***Indus Airways Private Limited vs Magnum Aviation Private Limited*** reported in (2014) 12 SCC 539 , wherein a 2-judge bench of the Supreme Court allowed the appeal while observing that the explanation appended to Section 138 of the Negotiable Instrument Act, 1881, treats dishonoured cheque as an offence, if the cheque has been issued in discharge of any debt or other liability. It has been held that as per the explanation, the said debt/ liability should exist on the date the cheque is drawn. Thus, it is a settled principle that the existence of debt/ liability on the date the cheque drawn is *sine qua non* for bringing an offence under the ambit of Section 138. The Hon'ble Court has further observed that "*if a cheque is issued as an advance payment for purchase of the goods and for any reason purchase order is not carried to its logical conclusion either because of its cancellation or otherwise, and material or goods for which purchase order was placed is not supplied, the cheque cannot be held to have been drawn for an existing debt or liability*". The Court has thus ruled that "*the payment by cheque in the nature of advance payment indicates that at the time of drawal of cheque, there was no existing liability*". In view of the aforesaid legal position, by bringing contradictions as regards quantity of goods actually supplied in view of entries reflected in rojmel and simultaneously non production of vital documents like bills, vouchers, delivery challans, in my view the accused has

raised a probable defense questioning actual quantity of goods supplied and the actual existence of debt as on the date of issuance of a cheque. With such lacunas in the case of complainant coupled with the fact that the first initiation of the proceedings were at the instance of the accused in issuing legal notice on the same day strongly raising objection about issuance of cheque under duress and coercion towards alleged payment of any dues tilt in favour of the accused to believe the probable defense that at the time of issuance of the cheque, it was in fact a security cheque and there did not exist any liability to attract an offence under Section 138 upon the dishonour of the cheque.

20. For the forgoing reasons, there being no merits in the submissions made by learned advocate for the applicant-original complainant, the present Revision Application fails. Notice is discharged.

21. Record and proceedings is directed to be sent back to the concerned Court, along with the writ of this order.

(NISHA M. THAKORE,J)

MARY VADAKKAN