NEUTRAL CITATION
2026:GUJHC:43979

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 4884 of 2020**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE P. M. RAVAL**

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| Approved for Reporting | Yes | No |
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| | Yes | |

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ROHIT CHOLAPURATH RATHNAKARAN & ANR.
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR.NANDISH H THACKAR(7008) for the Applicant(s) No. 1,2
MR KURIAN SANJAY(2369) for the Respondent(s) No. 2
MR ROHAN SHAH APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE P. M. RAVAL**

**Date : 14/07/2026**

**ORAL JUDGMENT**

1. The petitioners before this Court are invoking Section 482 of the Criminal Procedure Code, 1973 ('Cr.P.C.', for short) for quashing and setting aside the Criminal Complaint No.59095 of 2019 pending before the Court of learned Additional Chief Metropolitan, Ahmedabad for an offence punishable under Section 138 of the Negotiable Instrument Act, 1881.

2. The Respondent No.2 herein – original complainant had lodged the complaint with following averments.

2.1 That the complainant had agreed to purchase a Villa, Rosa Casa" in "MANJERI GARDENS" Project constructed by accused no 1, at ELANKOOR Village, District: MALAPPURAM, KERALA STATE, for which complainant had paid the consideration to accused No. 1 LLP. in various instalments.

2.2 Accused No. I is a Limited Liability Partnership, (L.L.P.) duly registered under The Companies Act and engaged in the business of Reality and Infra-structure etc. and accused are at present engaged in the completion and making of a project "Manjeri Gardens". Accused No.2 to 5 are partners in charge of and responsible for the day to day administra-tion and business of accused nol., and so ac-cused no. 2 to 5 are jointly and severally respon-sible for the acts of accused no 1.

2.3 That accused No.1, LLP, was unable to complete the "MANJERI GARDENS" Project, being devel-oped by accused and hence accused No.1 and complainant, had agreed to cancel the contract of purchase of Villa" Rosa Casa" in "MANJERI GARDENS" Project and it was agreed by accused to return the purchase money paid by complain-ant, vide Memorandum of Understanding dtd. 02-01-2018 duly executed by accused no 1 with complainant.

2.4 That accused No. 1 had issued a cheque in favour of complainant with the signature of accused No. 2 as a Partner of M/s. Builtman Realty and Infra-structure LLP, towards discharge and full repay-ment of legal debt and liability of accused No.1, as mutually agreed by accused No.1, with com-plainant under the aforesaid Memorandum of Understanding, with the following particulars :-

(i) Cheque No:- 375650

(ii) Dated: 04-05-2019

(iii) Amount: Rs 16,46,400/-

(iv) Drawn on Punjab National Bank, S.M. Street, KOZHIKODE.

2.5 It is stated that, complainant deposited the afore-said cheque on 04/05/2019 for collection. It is stated that on depositing the aforesaid cheque the said cheque was dishonoured by banker for reason "PAYMENT STOPPED BY DRAWER". Accordingly cheque return memo was issued by HDFC BANK LTD, dated 10/05/2019, and complainant's Bank, H.D.F.C BANK gave intimation on 16/05/2019.

2.6 That, the complainant sent a legal notice by RPAD and by post to all the accused their true and correct address on 16.05.2019 through Advocate and called upon the accused to make payment of the amount of the said returned cheque. That notice is duly served to the accused No.1, 2, 4 and 5 on 21.05.2019 and the said notice is returned from the accused No.3 on 21.05.2019 with the endoresment of "Absent".

2.7 That the accused has given false and febricated reply of said notice to complainant on 15.06.2019. And in this way, and by the aforesaid act of the accused it is crystal clear that the payment has not been made with ulterior reasons by the accused and he has malafidely, deliberately and intentionally with mensrea issued the said cheques knowing fully well that buy they are not having sufficient balance in account and the cheque would be dishonoured on account of Payment Stopped by Drawer.

2.8 That, by the aforesaid act, the accused have become liable to be prosecuted under the provisions U/s. 138 of The Negotiable Instruments Act, 1881.

2.9 That, the said cheque was deposited within the local jurisdiction of this Hon'ble Court and this Hon'ble Court has ample jurisdiction to take cognizance of the offence as committed by the accused.

2.10 The complainant be allowed to examine the following witnesses:

i) Complainant himself.

ii) Responsible Officer of the complainant's bank.
iii) Responsible Officer of accused's bank.

The complainant company also requests this Hon'ble Court to permit it to examine any other witness and produce any other documents as may be required to prove the offence.

2.11 Pursuant to the aforestated lodging of the complaint, the order came to be passed below Exh.1 dated 02.07.2019 by the Additional Chief Judicial Magistrate, Negotiable Court No.13, Ahmedabad to register the case and issuance of summons and the matter was fixed on 30.08.2019.

3. Learned advocate for the petitioners would submit that present applicants are not designated partners as per the Limited Liability Partnership Act, 2008 (‘LLP’, for short).

3.1 That the petitioners are not even signatories to the said Memorandum of Understanding ('MoU' for short) executed by accused no.1 as well as respondent no.2 and in fact signatories to the said MoU is one Shri Sandip Menon being the Managing Director of the M/s. Builtman Realty and Infrastructure L.L.P.

3.2 That the petitioners are also not signatories to the cheque under dispute which is part of MoU. That the subject matter of the property still stands in the name of the complainant and that on the reading of the MoU which has been heavily relied upon by complainant while lodging the complaint would reflect that the same is contingent agreement inasmuch as on passing of the cheque worth Rs.14,17,000/- , the complainant had to thereafter register the plot in the name of M/s. Builtman Realty and Infrastructure L.L.P or its assignees and when the cheque was not honoured, since the complainant was not desirous of continuing with the scheme being developed by the company in the name of "Rosa Casa". That the agreement was entered into and it is only after passing of the cheque that the complainant was to transfer the said property which he does not now desires to continue with was to be handed over to the original accused no.1 company and thus there was no existing legally enforceable debt or liability on the date of either issuance of the cheque or return of the cheque.

3.3 Learned advocate for the petitioners would further submit that the present applicants have participated in the day-to-day business affairs of the firm and thus provisions of

Section 141 of the NI Act would not be attracted and thereby the applicants cannot be held vicariously liable. Learned advocate for the applicants would further submit that Section 27 of the L.L.P. Act, more particularly Clause:(iii) provides that *an obligation of the limited liability partnership whether arising in contract or otherwise, shall be solely the obligation of the limited liability partnership and not that of the partners* and thus argued that even if the fact remains that the present applicants are partners and not designated partners would not be personally be liable but the firm would be liable and has thus argued to allow the present application.

3.4 Learned advocate for the petitioners would further submit that vide *email* dated 30.04.2019 it was informed to the complainant with regard to refund and repurchase of “Manjeri” plots would get postponed by another six months and also requested to send back the cheques and collect the fresh instruments and also gave an option to reconsider buying a unit in their Ooty Project and subsequently on 01.05.2019 similar *email* was addressed to the complainant pursuant to which no reply was received and, therefore, on 03.05.2019 a letter was addressed to the Branch Manager, Punjab National Bank, S.M.Street, Kozhikode, to stop the payment as the contract entered into was delayed and despite of these facts, has deposited the cheque for which neither present applicants can be held liable nor could it be stated that there was any debt or liability legally enforceable. Thus, when the cheque was not issued or discharged in whole or in part of any debt or liability, learned advocate for the applicants has argued to allow present application.

3.5 Learned advocate for the petitioners has relied upon the judgment in the case of *Indus Airways Private Limited and others vs. Magnum Aviation Private Limited and another* reported in **(2014)** 12 SCC 539, more particularly paras:9 and 15 thereof.

4. *Per contra,* learned Additional Public Prosecutor Mr.Rohan Shah for the Respondent No.1 – State and learned advocate Mr.Kurian Sanjay for the complainant would submit that the complainant had purchased immovable property being Survey No.2, Block No.64 situated at Village Elankoor, Taluka Ernad – Wandoor, District Mallappurram from one Mr.Areekkal Razak by way of registered sale-deed 18.11.2015 and that the accused no.1 – Firm is developer and is engaged in construction of Villa / House for the scheme known as “Manjeri Gardens” in the aforestated survey / block number and the complainant – Respondent No.2 herein had paid money for the construction of Villa “Rosa Casa” on the said land.

4.1 It is further argued that accused No.1 – firm despite from the payment of money for construction of Villa was unable to construct the same because of their financial constraints and difficulties pursuant to which complainant – Respondent No.2 herein had made request to return the amount of consideration paid to accused no.1 – Firm for the construction of said Villa and thereafter accused no.1 – Firm entered into MoU dated 02.01.2018 with the present complainant.

4.2 It is argued that the terms and conditions of the said MoU would reflect that accused no.1 – Firm would return the total amount of Rs.14,17,000/- to the complainant within four months from the date of execution of said MoU and thereafter respondent no.2 herein – original complainant shall immediately register the said plot in name of accused No.1 – Firm or its assignee. Moreover, the registration charges and other statutory charges, stamp duty and other incidental expenses were to be borne by accused No.1 – Firm. Thus, it is argued that it is the inability of accused no.1 – Firm and its partners to handover possession of constructed Villa in time and that the present complainant had to seek refund for which cheque came to be issued and was returned because of the stop payment instructions issued by the Firm that the present complaint is lodged arraigning the present applicants who are also the partners of the accused No.1 – Firm and, therefore, learned advocate for the applicants has argued to reject the present application.

4.3 It is further argued that despite of service of statutory notice, as provided under the Negotiable Instrument Act, is served, however, having not made payment within statutory period of 15 days after service of notice of the said outstanding amount that the present complaint came to be lodged and that even on the date of issuance of the cheque, present applicants were partners in the said Limited Liability Partnership and has thus argued that the trial Court has validly issued summons to the applicants having found that *prima facie* case attracting provisions of Section 138 of the Negotiable Instrument Act are attracted and thus argued to reject the present applicants.

4.4 Learned advocate for the complainant, in support of his submissions, relied on following judgments :

(i) Unreported decision of this Court rendered in the case of *Geetha V G Proprietor of M/s. Flora – Arcade vs. Jignesh D Shah Director, N K Fire & Safety and another,* dated 10.05.2012, in Criminal Miscellaneous Application No.6509 of 2012;

(ii) *Iridium India Telecom Ltd. vs. Motorola Incorporated & Ors. ,* **I (2011) SLT 690**;

(iii) *Som Mittal vs. Government of Karnataka,* **III (2008) SLT 259**; and

(iv) *P.S.Meherhomji vs. K.T.Vijay Kumar and others,* **X (2014) SLT 110**.

4.5 To buttress his argument, learned advocate for the complainant would further submit that the jurisdiction of High Court, under Section 482 of the Cr.P.C., has to be sparingly utilised, more particularly when strong *prima facie* case is made out and that the learned Magistrate had issued summons, this Court may not interfere at the threshold but conducting a mini trial and thus argued to reject the present application.

5. Heard learned advocates for the respective parties.

5.1 Undisputed facts which reveal from the complaint and from the papers appended with the petition memo are as under:

(i) the factum of sale-deed executed on 18.11.2015 between Mr.Areekkal Razak and the present complainant Mr.Rubin Prince Philip;

(ii) Memorandum of Understanding dated 02.01.2018 between M/s. Builtman Realty and Infrastructure L.L.P. and complainant Mr.Rubin Prince Philip being executed by Sandip Menion, as Managing Director of M/s. Builtman Realty and Infrastructure L.L.P.; and

(iii) **Abhilash Radharaman and Sandip Pottathil** as designated partners in the said LLP and that the present applicants being the partners on the date of alleged offence of issuance of cheques which came to be returned.

5.2 What has been stated in the complaint if is taken on face of it, which has been reproduced hereinbefore, would reveal that accused No.1 – LLP was unable to complete the project being developed by accused company and hence the accused No.1 and complainant had agreed to cancel the contract of purchase of Villa 'Rosa Casa' in Manjeri Gardens Project and it was agreed by the accused to return the purchase money paid by the complainant vide MoU dated 02.01.2018 duly executed by the accused No.1 with the complainant. Rest of the averments made in the complaint which have been reproduced hereinbefore are not relevant for the purpose of deciding the issue before this Court and, therefore, the averments made in the complaint , more particularly in para:3, would be relevant.

5.3 The factum of land being transferred in the name of present complainant by one Mr.Areekkal Razak is not in dispute. Thus, it transpires that land has been purchased by the present complainant from Mr.Areekkal Razak and not from the present Firm or accused persons. What has been alleged in the complaint would reflect that LLP was unable to complete the Majeri Gardens Project being developed by accused and hence accused No.1 and complainant had agreed to cancel the contract of purchase of Villa i.e. 'Rosa Casa' in Manjeri Gardens Project and, therefore, the accused had agreed to return the purchase money paid by the complainant. If the MoU is taken into consideration, what has been agreed between the parties i.e. M/s. Builtman Realty and Infrastructure L.L.P. and the complainant herein is that the land as per title deed dated 18.11.2016 bearing registration no.5638 of 2015 owned by Mr.Rubin Prince Philip i.e. present complainant was to be returned after the amount of Rs.14,17,000/- were returned to the complainant. The *email* relied upon by learned advocate for the applicants would reveal that refund and repurchase of Manjeri Gardens was postponed for another six months due to financial constraints of the accused no.1. Thus, what has been promised by the accused company is that in case their inability to develop the project, they are ready and willing to take back the land which has been purchased by the present complainant from Mr.Areekkal Razak and due to financial constraints they could not construct villa on the said land and thus on the payment of Rs.14,17,000/-, the complainant had to transfer the said land in the name of company or in favour with whom it may be assigned. Thus, an agreement between the parties was with regard to non-construction of the villa on the said land not not with regard to the land itself which was purchased from Mr.Areekkal Razak.

5.4 From the reading of MoU dated 02.01.2018 it clearly transpires that the complainant had booked Villa No.4 in the project and was now not interested and thus cancelled the contract of purchase pursuant to which accused no.1 Company agreed to refund the total amount of Rs.14,17,000/- to the complainant within four months from the period of date of execution of MoU. Thus, what transpires is that Villa was to be developed on the plot purchased from Mr.Areekkal Razak by the present complainant and since accused company showed his inability to develop as per the agreement between the parties the company had sought six months of time, however, complainant did not agree and, therefore, entered into MoU that on payment of Rs.14,17,000/- the land standing in the name of the complainant would be transferred to LLP or its assignees. Thus, the said MoU would also reflect that the parties are entitled to specific performance of the MoU against each other and in case of breach of any condition mentioned in the MoU by the first party i.e. accused no.1 shall compensate the second party i.e. the complainant by paying interest @ 12% p.a. on the refund value. It transpires that pursuant to the said agreement that the cheque impugned was issued which was returned because of the 'stop payment' instructions given by the accused no.1 company to the Bank.

5.5 From the reading of the complaint, it transpires that accused no.1 and the complainant had agreed to cancel the contract of purchase of villa 'Rosa Casa' since the accused no.1 company could not develop it in time, the land remains in possession and in name of the complainant which was agreed to be repurchased by the accused no.1 company. Thus, to attract the provisions of Section 138 of the Negotiable Instrument Act, 1881, there has to be a payment for the discharge in whole or in part of any debt or other liability. Thus, what is contemplated by Negotiable Instrument Act is that the cheque must be issued in discharge of an existing or in past adjudicated liability. In the present case, the land is in the name of complainant, the inability of the accused to develop the said land can be said to be a breach of condition. There is not a single iota of evidence that the amount was paid by the complainant to the accused no.1 company for development of the said villa. Therefore, it cannot be said that there existed any liability or debt on the date of issuance of cheque which is part of agreement between the accused no.1 company and the complainant having cancelled to develop the said villa which is purely a contingent contract and as held by the Hon'ble Supreme Court in the case of *Indus Airways*

*Private Limited and others vs. Magnum Aviation Private Limited and another* **(supra),** when if there is no legally enforceable debt or other liability subsisting on the date of drawn of the cheque, the issuance of cheque towards repurchase / refund of the scheme whereby the accused no.1 company decided to refund the said amount it cannot be said that there was an existing liability or debt standing in the name of accused no.1 company for which cheque was issued. However, other remedies available under the law for enforcement of such agreement is always open, however, would not attract provisions of Section 138 of the Negotiable Instrument Act having failed to *prima facie* even point out that there existed a legal enforceable debt or liability on the date of issuance of cheque.

5.6 As far as reliance placed by learned advocate for the complainant in the decision of this Court in the case of *Geetha V G Proprietor of M/s. Flora – Arcade vs. Jignesh D Shah Director, N K Fire & Safety and another,* dated 10.05.2012, in Criminal Miscellaneous Application No.6509 of 2012 is concerned, in the said case the High Court vide order dated 10.05.2012 rejected the application filed under Section 482 of the Code of Criminal Procedure, 1973 since the relations with the complainant for purchase of the goods was not disputed by the complainant for his non-signatory of cheque and account being not maintained, and that the High Court having found that the said aspects were in realm of the defense that can be raised before the competent Court, the High Court was not inclined to exercise discretionary power. The facts in the present case are totally different and *prima facie* no existing liability or debt is found, the cited case is of no help.

5.7 Reliance is placed upon by learned advocate for the complainant in the case of *Iridium India Telecom Ltd. vs. Motorola Incorporated & Ors.* reported in (2011) I SLT 690 to buttress his argument that interference by the High Court in exercise of its jurisdiction under Section 482 of Code of Criminal Procedure, can only be where a clear case of such interference is made out as frequent and uncalled interference even at the preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in criminal case which may not be in the public interest. However, after considering the facts of the referred case, the Hon'ble Supreme Court was of the opinion that High Court ought to have refrained from indulging in detailed analysis of very complicated commercial document and reaching any definite conclusion and has held that the High Court clearly exceeded the jurisdiction in quashing the criminal proceedings in the peculiar facts and circumstances of the said case. If the facts on hand are taken into consideration, as noted hereinabove, even the complaint is read as it is even without referring to other documents, what has been alleged in para:3 is to the effect that the LLP unable to complete Manjeri Gardens Project being developed by accused and thus had agreed to cancel the contract of purchase of Villa by itself cannot be sated to be a debt on the date of issuance of alleged cheque there was any legal debt or liability for which the cheque came to be issued since the land is already in the name of the complainant as referred in MoU dated 02.01.2018 executed by accused no.1 with the complainant. Hence, the cited case would be of no helpful to the complainant.

5.8 Learned advocate for the complainant has also relied upon the decision of Hon'ble Supreme Court rendered in case of *Som Mittal vs. Government of Karnataka* reported in **III (2008) SLT 259** again to agitate that the power under Section 482 of CrPC to quash the proceedings should not be used mechanically or routinely but with care and caution only when clear case of quashing is made out and failure to interfere would lead to a miscarriage of justice. This Court is bound by the said principle. *Prima facie,* from the reading of MoU, it is found that keeping in juxta pose the complaint it cannot be said that while issuing of summons, the trial Court had even *prima facie* applied its mind to arrive at a finding that a case of issuance of summons is made out.

5.9 Learned advocate for the complainant has referred decision of Hon'ble Supreme Court rendered in case of *P.S.Meherhomji vs. K.T.Vijay Kumar and others* reported in **X (2014) SLT 110,** to contend that when the complaint is supported by statement of complainant on oath and necessary ingredients of offence are disclosed, the High Court should not interfere with the order of taking cognizance.

As stated hereinabove, when it is found from the agreement which has been relied upon by the complainant himself that he did not want to continue with the development of villa at 'Rosa Casa' in Manjeri Gardens being developed by accused no.1 company, the company agreed to purchase back land in question which stood in the name of complainant after returning the money to the tune of Rs.14,17,000/- as per MoU and if the cheque is returned, the land still stands in the name of the complainant and in absence of any averment in the complaint of having made payment for construction of villa is concerned, the complaint itself was not maintainable having failed to point out that on the date of issuance of cheque, there was any debt or liability and in discharged of the same the payment was made either whole in or part by accused no.1. Having found that it is clearly a contingent contract and only if the accused was to return the amount to the tune of Rs.14,17,000/- that the land was to be returned back, thus the cited cases are of no help to the complainant.

6. For the foregoing reasons and discussions, the present petition is required to be allowed and it is allowed accordingly. The Criminal Complaint No.59095 of 2019 pending in the Court of Learned Additional Chief Metropolitan Magistrate, Ahmedabad and consequential proceedings thereof, if any, is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. Direct service is permitted.

**(P. M. RAVAL, J)**

MISHRA AMIT V.