



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION -
NEGOTIABLE INSTRUMENT ACT) NO. 1148 of 2018**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE NISHA M. THAKORE

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Approved for Reporting	Yes	No
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KHALIDKHAN SAUKATKHAN PATHAN
Versus
MUNIRAHMEDA M. SHEIKH & ANR.

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Appearance:

MR BILAL M RADHANPURWALA(10978) for the Applicant(s) No. 1
NON BAILABLE WARRANT SERVED for the Applicant(s) No. 1
NOTICE THROUGH SPEED POST UNSERVED for the Respondent(s) No. 1
MR. NIRAJ SHARMA ADDL. PUBLIC PROSECUTOR for the Respondent(s)
No. 2

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CORAM: HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 21/07/2026

ORAL JUDGMENT

1. The present Revision Application is filed at the instance of the original accused under Section 397 read with Section 401 of the Code of Criminal Procedure against the judgment and order dated 28.04.2014 passed by learned Addl. Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No. 387 of 2011 as well as judgment and order dated 14.08.2018 passed by learned Addl. Sessions Judge, City Civil and Sessions Court, Ahmedabad in Criminal Appeal No. 155 of 2014.



2. By the said impugned judgment and orders passed by both the Courts, the present applicant-original accused has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act. The Courts have further imposed sentence of one year simple imprisonment with a fine of Rs. 5000/- failing which the applicant is directed to undergo further period of simple imprisonment of 3 months. The aforesaid order of conviction passed by the Trial Court has been confirmed in Appeal before the learned Addl. Sessions Judge. At the stage of pronouncement of the order confirming the conviction, the learned Sessions Judge has directed the applicant to surrender before the Court of learned Addl. Chief Metropolitan Magistrate within a period of 15 days from the date of such pronouncement which was 14.08.2018. Hence, the present Revision Application.

3. Considering the grounds raised in the Revision Application and the submissions made by learned advocate for the applicant, the learned Single Judge of this Court vide oral order dated 24.09.2018 had admitted the Revision Application.

4. The learned Single Judge was further pleased to grant interim relief thereby suspending the sentence imposed by both the Courts, pending hearing and final disposal of the present Revision Application, on condition of deposit of 20% of remaining amount. The learned Single Judge had also enlarged the applicant on bail subject to furnishing fresh bail bonds and surety to the satisfaction of the Trial Court on condition that he shall proceed with the Revision



Application as and when it is listed and shall surrender his passport before the concerned Trial Court and shall not leave India with the prior permission of this Court.

5. The matter was notified for the first time before this Court under special assignment of old targeted cases on 15.06.2026. It was noticed from the record that despite direct service being permitted to serve the respondent-original complainant, no attempts were made to serve the respondent-original complainant. In absence of any service of direct service availed, this Court was, therefore, constrained to issue fresh Rule acceding to the request of learned advocate on record to serve the respondent No.1-original complainant through speed post. The matter was, therefore, notified on 06.07.2026.

6. The learned advocate for the applicant had pointed out that he had addressed a letter to the original accused, however, the same has returned back with an endorsement of 'left'. He has further pointed out his difficulties in absence of any contact with the accused, he was unable to conduct the matter. Considering the aforesaid circumstances, this Court had taken into consideration the conduct of the applicant who had otherwise assured this Court to proceed with the matter as and when the matter was taken up for final hearing at the stage of granting of bail.

6.1 The Court was therefore, constrained to issue non-bailable warrant upon the applicant which was made returnable on 13.07.2026. On 13.07.2026, the learned APP



has placed on record the report submitted by Police Inspector, Isanpur Police Station, Ahmedabad City, praying for further time as the whereabouts of the applicants could not be traced out. The matter was, therefore, adjourned to 20.07.2026.

6.2 On the next date of hearing learned APP appearing for the respondent State has placed on record the report dated 18.07.2026, submitted by the concerned Police Station, thereby reporting about the arrest of the applicant who was taken in judicial custody. Considering the request of learned advocate who had recently entered the appearance on behalf of the applicant the matter was adjourned for further consideration on 21.07.2026. Today, the matter is taken up for final hearing with the able assistance of learned advocates on record.

7. At the outset, learned advocate for the applicant has tendered an apology and has submitted that it was never the intention of the applicant to not to follow the conditions imposed by this Court at the stage of grant of bail. It was explained that the applicant was in contact with the lawyer who represented his case before the Trial Court. However, unfortunately he had expired pending the present proceedings. It was further submitted that the applicant was not aware of the fact that the matter was notified for final hearing. Learned advocate had vehemently assailed the impugned judgment and orders passed by both the Courts below by submitting that the Courts below have failed to



appreciate the specific defense raised by the accused. It was submitted that the applicant had only borrowed Rs. 4 lakhs from the complainant out of which an amount of which Rs. 1,50,000/- and Rs. 90,000/- were paid to the complainant on different occasion. It was, therefore, submitted that out of Rs. 4 lakhs, total amount of Rs 2,40,000/- was paid to the complainant. However, the complainant had misused the cheque given to him as collateral security by the accused and had entered the figure of Rs. 5 lakhs instead of remaining amount of Rs. 1,60,000/- at the time of deposit of cheque before the concerned Court. It was further submitted that despite cogent evidence being brought on record in the nature of witness namely Siddique Mohdsabir Mohdvarish being examined by the defense, the Trial Court as well as the Appellate Court has refused to take into consideration the aforesaid evidence of the defense by holding that the heavy burden lied upon the accused to prove his defense in absence of any documentary evidence being produced on record, the aforesaid defense of the accused cannot be said to have been established clearly on the basis of the evidence of the witness.

7.1 Learned advocate had further invited my attention to the findings and reasons recorded by the Courts below in this regard. The aforesaid findings and reasons were assailed by contending that merely because at the relevant stage the accused had not responded to the legal notice, the same ought not to have taken into consideration while discarding the evidence of the said witness and disbelieving the defence of the accused. It was further pointed out that



in fact specific defence was raised before the Trial Court as well as it was argued before the Appellate Court where the legal notice issued by the complainant was served at the address where the applicant was not residing. It is an undisputed fact that said notice was not served upon the accused but in fact being received by the father of the accused. It was further submitted that the Court below have failed to disbelieve the specific defense raised by the accused that as explained earlier the actual amount borrowed was Rs. 4 lakhs and not Rs. 5 lakhs.

8. Considering the evidence of the witness who has supported the defense by deposing that the cheque was entrusted to the complainant as security as against borrowed sum of Rs. 4 lakhs, the Court has failed to accept the aforesaid defense as well merely on the ground that except for the ocular evidence, no documentary evidence worth has been brought on record.

9. Learned advocate has further submitted that considering the scheme of the act, no standard proof is required to be brought on record. The probable defense is expected from the accused to be brought on record in view of the evidence of the witness, the Courts below ought to have concluded that there is rebuttal of the case of the complainant and in absence of any further evidence being placed on record by the complainant ought to have recorded the acquittal. Alternatively, learned advocate has placed on record the undertaking given by the son of the applicant namely Saukatkhan Khalidkhan Pathan. It was submitted



that the applicant undertakes to deposit an amount of Rs. 4 lakhs in connection with the complainant which is subject matter of the captioned revision. Since the applicant is in judicial custody from 17.07.2026, the present undertaking is filed by the son of the applicant who undertakes to deposit the above referred amount within a period of two months before the concerned Trial Court.

10. Learned advocate has, therefore, urged this Court to accept the aforesaid undertaking and to release the applicant by quashing and setting aside the impugned order of conviction.

11. Learned Addl. Public Prosecutor Mr. Niraj Sharma appearing for the respondent State authority has forcefully objected to the aforesaid submissions made by learned advocate for the applicant. Inviting my attention to the reports dated 18.07.2026 submitted by the concerned Police Station, has submitted that the applicant though initially could not be traced out, however, later on he has been arrested by the concerned police officer on 17.07.2026 and is currently in judicial custody. It was submitted that there are concurrent findings recorded by the Courts below and considering the scope of revision, this Court in absence of any palpable error or perversity being pointed out by the learned advocate for the applicant may not entertain the present Revision Application. He has, therefore, urged this Court to uphold the order of conviction as well as sentence.



12. As regards the alternative prayer made by learned advocate for the applicant, it was submitted that considering the nature of offence this Court may pass appropriate orders in this regard.

13. I have heard the learned advocates appearing for the respective parties. Before considering the merits of the case, it would be appropriate to note that the fresh Rule was issued upon the respondent-original complainant which was permitted to be served through speed post by the applicant. However, as reported by learned advocate on record appearing at the relevant stage for the applicant, it was reported that at the concerned address the whereabouts of the respondent No.1 original complainant could not be traced out. In this regard, it would be appropriate to note that attempts were made to serve the respondent original complainant through Registry. The concerned learned advocate who had appeared at the relevant stage has placed on record the postal cover.

14. When the matter was taken up for hearing, learned advocate who had subsequently entered the appearance on behalf of the applicant has reported that the original complainant has expired. The copy of the xerox copy of the death certificate of the original complainant has been placed on record wherein the date of death of the original complainant is reported to be 07.05.2021. It was further submitted by learned advocate for the applicant that the wife of the deceased complainant has shifted abroad and in absence of details of the heirs and legal representatives of



the deceased complainant, he is unable to bring them on record.

15. In order appreciate the merits of the case, this Court had proceeded with the hearing of the matter with the assistance of learned advocates for the applicant and the learned Addl. Public Prosecutor appearing for the respondent State.

16. I have carefully considered the submissions made by learned advocate for the respective parties in light of the findings and reasons assigned by the Courts below. I have carefully gone through the entire evidence on record. Considering the scope of revision under Section 397 of the Code of Criminal Procedure, noticing the concurrent findings and reasons recorded by the Courts below, I have considered the arguments advanced by learned advocate for the applicant. In order to appreciate the specific defense raised by the applicant with regard to no legally enforceable debt being in existence, it is transpired on record from the evidence of the complainant more particularly the complainant's examination-in-chief and the notice that all through out the complainant has pleaded that sum of Rs. 5 lakhs has been borrowed by the applicant. The Trial Court while evaluating the evidence of the complainant has though noted discrepancy with regard to the dates on which the aforesaid amount was alleged to have been borrowed, however, as noticed that the applicant original accused has categorically admitted to the fact of having borrowed Rs. 4 lakhs from the complainant. Further, the Trial Court has



also noticed that the defence has tried to project the case in the cross-examination of the complainant about certain amount out of Rs. 5 lakhs being withdrawn through cheque as well as through vouchers. The aforesaid aspect has been challenged in the cross-examination by pleading question with regard to any documentary evidence being brought on record. Having evaluated the aforesaid evidence, the Trial Court has believed the case of the complainant of extending hand loan of amount of Rs. 5 lakhs. As regards service of demand notice is concerned, the Trial Court upon appreciation of evidence in the nature of legal notice at (Exh. 9) , the RPAD acknowledgment slip at (Exh. 12), that the aforesaid legal notice has been accepted by the father of the applicant. The learned judge has also noted that the accused has not raised a defence that he is residing separately from his father. In absence of such contention being raised, the Trial Court has believed the aspect of compliance of the service of the legal notice. The learned Trial Court has also taken into consideration the evidence of the witness Mohdsabir Mohdvarish (Exh. 19). The learned judge has noted that though the said witness has stated in his examination-in-chief that the accused had repaid amount of Rs. 1,50,000/- on one occasion and Rs. 90,000/- thereafter in his presence, however, as against that the complainant has categorically denied the aforesaid aspect in his cross-examination. With such evidence on record the Trial Court has placed heavy burden upon the accused to prove his defense. In absence of any documentary evidence being brought on record in this regard the Trial Court has disbelieved the case of the applicant about borrowing sum



of Rs. 4 lakh and the cheque being handed over as security towards the aforesaid amount.

17. Having appreciated the aforesaid findings and reasons assigned by the Trial Court and the First Appellate Court having confirmed the aforesaid findings and reasons, this Court does not find any error being committed by the Courts below convicting the present applicant for the offence punishable under Section 138 of the N.I Act. It is settled legal position that in absence of any challenge to the signature of the drawer of the disputed cheque the foundational facts with regard to the ingredients of Section 138 being established on record. The presumption is available against the accused in view of provision of Section 118 read with Section 138 of the Act, as regards legally enforceable debt against the drawer of the cheque.

18. In view thereof, considering the scope of revisional jurisdiction, this Court is not inclined to interfere with the aforesaid findings and reasons assigned by the Courts below. This brings me to the alternative prayer prayed for by the learned advocate for the applicant, in view of the undertaking filed on behalf of the applicant.

19. I have carefully considered the undertaking submitted by the son of the applicant. It is stated on oath that he is agreeable to deposit amount of Rs. 4 lakhs in-connection with the complaint which is the subject matter of the captioned Revision within a period of 2 months. In view of the undertaking, this Court is inclined to consider the



prayer of the applicant bearing in mind the provisions of Section 147 of the Act.

20. In view of the above discussion, the impugned judgment and order dated 28.04.2014 passed by the learned Addl. Chief Metropolitan Magistrate, Ahmedabad in Criminal Case No. 387 of 2011 as confirmed by the learned Addl. Sessions Judge, City Civil and Sessions Court, Ahmedabad in Criminal Appeal No. 155 of 2014 dated 14.08.2018 is modified to the extent that the conviction of the applicant for the offence punishable under Section 138 of the N.I Act stands compounded on condition of deposit of Rs. 4 lakhs with the concerned Trial Court within a period of two months from today.

21. In view of the undertaking, the impugned judgment and order imposing sentence and fine is hereby quashed and set aside. In view of the aforesaid directions, the applicant original accused is directed to be released from the custody subject to furnishing bail bonds and surety of sum of Rs. 10,000/-.

22. The record and proceedings are directed to be sent back forthwith to the concerned Trial Court. The applicant is directed to submit before the Registry the receipt of the concerned Trial Court acknowledging the fact of deposit of amount of Rs. 4 lakhs as directed by this Court by this order within a period of 2 months failing which the Registry shall re-notify this matter for orders.



23. With this observations the Revision Application stand disposed of.

24. Direct Service is permitted.

MARY VADAKKAN

(NISHA M. THAKORE,J)