IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION - NEGOTIABLE INSTRUMENT ACT) NO. 385 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE NISHA M. THAKORE --*Sd/-*

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Approved for Reporting	Yes	No
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MITESH VAJUBHAI PANCHAL
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR P P MAJMUDAR(5284) for the Applicant(s) No. 1
TEJAS K MOTWANI(8499) for the Applicant(s) No. 1
ARCHITA M PRAJAPATI(8241) for the Respondent(s) No. 2
MR MP PRAJAPATI(677) for the Respondent(s) No. 2
ROHANKUMAR H. RAVAL for the Respondent(s) No. 1

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

Date : 14/08/2026

ORAL JUDGMENT

1. The present revision application is filed under Sections 397 with 401 of the Code of Criminal Procedure, 1973 at the instance of the original accused being aggrieved and dissatisfied with the judgment and order dated 25th March

2019 passed by the learned Addl. Sessions Judge, Ahmedabad in Criminal Appeal no.94 of 2017 upholding the judgment and order of conviction dated 19th August, 2017 passed by the learned 2nd Addl. Chief Judicial Magistrate, Ahmedabad in Criminal Case No. 7601 of 2015. By the aforesaid judgment and orders, the present applicant - original accused, has been convicted for the offence punishable under Section 138 of Negotiable Instruments Act. Hence, the present revision application.

2. In nutshell, the case of the complainant, as alleged in the complaint, *inter alia*, was that the applicant and the respondent were having good relations, and therefore, on previous occasion, when the applicant had approached for financial help for purchase of machinery for his business purpose, the respondent complainant had given him hand loan, which amount had been returned back to complainant in time. Again, the applicant was in need of an amount of Rs.4,50,000/- and had, once again, approached the complainant, which he promised to return within a period of four months. The complainant had, therefore, withdrawn some money from the bank, and had given him a hand loan of Rs.4,50,000/- in cash. The applicant had issued two cheques dated 25th April 2015 and 25th May 2015 of sum of Rs.2,00,000/- each drawn on the Bank of Baroda, and had thereby promised to honour such cheques as and when the same were deposited by the complainant.

2.1 It is further pleaded in the complaint that the cheques were deposited by the complainant, however, the same have returned dishonoured. The complainant had approached the applicant, whereby the applicant had assured for payment of the amount and had insisted for deposit of the cheque on 9th July 2015. Accordingly, the complainant had once again deposited cheques on 9th July 2015. However, both the cheques were dishonoured and returned with an endorsement "insufficient funds".

2.2 The cause of action, therefore, arose for the complainant to initiate legal action against the defaulter. The legal notice dated 18th August, 2025 was, therefore, addressed to the applicant under Section 138 of the Act, 1881, which was sent by RPAD to the applicant, which is stated to have been duly served upon the applicant on 19th August 2015. Despite due service of aforesaid legal notice, the applicant had failed to adhere to his assurance by not paying any amount borrowed. The complainant was, therefore, constrained to file a complaint under Section 138 of NI Act before the Court of learned 2nd Addl. Chief Judicial Magistrate, Ahmedabad, which was registered as Criminal Case No. 7601 of 2015 against the present applicant - original accused.

3. The summons issued by the trial Court has been duly served upon the accused, who was represented through lawyer. The statement of the accused in terms of Section 251 of the Code was recorded, wherein the plea of denial has been recorded. During the course of trial, the complainant has submitted his examination-in-chief affidavit at Exh.4.

4. The complainant has also laid various documentary evidences, the details of which are reproduced hereunder:

Sr. no.	***Particular***	***Exh.***
1.	*Original cheque no.525263 dated 25th April 2015*	***8***
2.	*Original Cheque No. 525262 dated 25th May 2015*	***9***
3.	*Original Bank slip dated 9th July 2015, acknowledging deposit of cheque,*	***10***
4.	*Original Postal Slip dated 17th August 2015*	***11***
5.	*Original Postal Slip dated 17th August 2015*	***12***
6.	*Original Acknowledgment Slip dated 19th August 2015*	***13***
7.	*Original Acknowledgment Slip dated 19th August 2015*	***14***
8.	*The bank account statement of complainant dated 28th July 2015*	***18***
9.	*Dated 30th September, 2015*	***28***
10.	*Return memo dated 10th July 2015*	***29***
11.	*Return memo dated 10th July 2015*	***30***
12.	*Original RPAD dated 17th August 2015*	***35***

Apart from the aforesaid evidence, the complainant has also examined witness Wasim Rajput at Exh.27 and Jaynishbhai Bipinbhai Panchal at Exh.32.

5. As against the aforesaid evidence laid by the complainant, the accused has also placed on record various documentary evidences along with a list of documents at Exh. 40. This mainly includes cheque no.46 of Kotak Mahindra Bank dated 7th April 2015 issued in the name of complainant for Rs.25,515/- and cheque no.64 dated 22nd May 2015 for

amount of Rs.70,000/-. The certified copy of bank statement bearing account no.5811420139 for the period between 1st April, 2015 to 30th May, 2015 has also been produced on record at Exh.41. No further evidence has been laid by the parties.

6. The further statement of the accused has been recorded under Section 313 of the Code, who has mainly denied and has reiterated that a false complaint has been lodged.

7. The trial Court upon overall appreciation of the evidence brought on record has recorded satisfaction with regard to maintainability of such complaint as been filed within the stipulated time period of limitation and the mandatory requirement being complied. Considering the provisions of Sections 118 and 139 of the Act, in absence of any challenge being made to the signature of the accused on the disputed cheques, the Court has raised the presumption in favour of the complainant that the disputed cheques were given towards the outstanding dues, and has shifted the burden upon the accused to prove his defence. The trial Court has noted that the bank statement produced by the accused at Exh.41 does suggest that a sum of Rs.95,515/- has been paid to the complainant and the complainant has also fairly conceded receipt of such amount in his cross-examination. However, the trial Court has noted that no further question has been put to the complainant as to whether such payment was accepted towards the transaction in question. The trial Court has also noted that no further evidence has been laid on

record by the accused to establish the fact that part payment of Rs.95,515/- was made in favour of the complainant as against the transaction in question. The trial Court has further taken into consideration the conduct of the accused who has, for reasons best known, chosen not to respond to the legal notice despite being served.

8. In background of such circumstances emerging on record, the trial Court has followed the principle laid down by this Court in the case of *Girishbhai Natvarbhai Patel Vs. State of Gujarat* reported in *2006 (1) GLH 530*, by observing that even if the defence of the accused about misuse of cheque, as having entrusted blank cheque, is to be believed, it confers an inherent authority to recover the amount. Noticing the fact that the accused has not challenged his signature on the disputed cheque, the trial Court has refused to accept such defence of the accused. The trial Court has also noted the relevant entries as reflected in the statement of account of the accused produced on record at Exh.41, which otherwise is in the name of Bootbhavani Industrial.

9. Having noted the aforesaid aspect, the trial Court has found that the accused has failed to produce any evidence to suggest as to in what manner the accused is related to the aforesaid firm. The trial Court has convicted the accused for the offence alleged by imposing sentence of six months simple imprisonment with penalty of Rs.2,500/-. The trial Court by impugned judgment and order of conviction has further passed order of compensation of the amount of disputed

cheque in favour of the complainant.

10. As against the aforesaid findings and reasons assigned by the trial Court convicting the accused, the appellate Court has refused to entertain the appeal preferred by the accused under Section 374 of the Code. The appellate Court has re-appreciated the entire evidence on record and has found that the complainant has produced all the relevant documentary evidence in support of his complaint. As against that despite sufficient opportunities given to the accused to defend his case, no rebuttal evidence or contrary evidence has been brought on record to dislodge the presumption raised in favor of the complainant in terms of Sections 118 and 139 of the Act. As regards misuse of blank cheque is concerned, the appellate Court has considered the effect of Section 87 read with Section 20 of the Act to arrive at conclusion that when the cheque bearing signature of the drawer is delivered and is received by payee for discharge in whole or in part of any debt or liability, there is an implied authority for the person receiving such cheque to complete it by filling the blanks and the amount being filled up is under such implied authority.

11. In view of the aforesaid provisions, the appellate Court has held that the complainant has proved his case by bringing cogent evidence on record and has thus upheld the order of trial court by holding that the cheques were issued by the accused towards legally enforceable debt. Considering the factual matrix of the case, the Court had observed that the appellant has failed to examine any witness nor he has

tendered his affidavit, and the only defense which has been raised is in the form of his further statement recorded under Section 313 of the Code stating that a false case is filed against him. The appellate Court has therefore arrived at a conclusion that the cheque was presented by the complainant, which has got dishonored, the appellant having failed to pay the due amount of the disputed cheque, has rightly been convicted for the offense punishable under Section 138 of the Act. The appellate Court by impugned judgment and order has therefore dismissed the appeal by holding it to be without any merit. The appellate Court has further confirmed the order of sentence by directing the appellant to surrender before the learned Magistrate.

12. Considering the grounds raised in the revision memo and the willingness shown by the present applicant - original accused to deposit rest of the cheque amount, i.e. Rs.3,20,000/- from the total amount of Rs.4,00,000/- as Rs.80,000/- were already deposited at the stage of appeal, this Court vide order dated 5th April 2019 had admitted the revision and had granted interim relief by observing that on deposit of such amount of Rs.3,20,000/-, time to surrender was extended till next date of hearing. It is required to be noted that the matter was thereafter notified on board from time to time and the interim relief was directed to be continued till the next date of hearing. Pending the hearing of the main revision application, miscellaneous application was preferred by original complainant seeking withdrawal of the entire deposited amount of Rs.4,00,000/- being CR.MA no.1 of

2019. This Court vide order dated 2nd July, 2026 had permitted the release of amount of Rs.3,20,000/- with interest if deposited in a fixed deposit scheme with a bank, in favor of the complainant subject to filing of undertaking that such withdrawal shall be subject to outcome of the present proceedings.

13. The matter was thereafter taken up for final hearing on 28th July 2026. Upon conclusion of arguments, the matter was kept for orders. The learned advocate was permitted to place on record the paper book of relevant documents despite the record and proceedings being called for.

14. Mr. P. P. Majmudar, learned advocate appearing for the applicant has assailed the impugned judgment and order passed by the Courts below on the ground that the burden was upon the complainant to prove his case that the cheques in question were issued towards legally enforceable debt or any liability incurred by the present applicant. It was submitted that no documentary worth has been produced on record to prove that the cheques were drawn for discharge of any legal debt incurred by the applicant. On the contrary, a specific defense was raised by the applicant that in view of the earlier transaction where the applicant had borrowed a hand loan of Rs.2,00,000/- from the complainant, blank cheques signed by the applicant were handed over to the complainant as security. It was further submitted that even in cross-examination, the complainant has conceded to the suggestion put by the learned counsel for the accused in this regard. He

has further submitted that the relevant documentary evidence in the form of bank statements of the accused has also been produced on record at Exh.41. The attention of this Court was invited to the fact that the complainant in his complaint has alleged that he had withdrawn amount of Rs.1,50,000/- from the bank on 22nd November, 2014 and further sum of Rs.3,12,000/- was withdrawn on 25th November 2014, which would come to Rs.4,62,000/- as against Rs.4,50,000/- claimed to have been handed over to the accused. Referring to the relevant entries as reflected in the statement of bank of the complainant at Exh.18, the reference was made to the evidence of the witness examined at Exh.32, who has categorically deposed that on 24th November, 2014, he had visited the house of complainant, whereas the complainant case appears to be otherwise. It was further pointed-out that the complaint is filed for an amount of Rs.4,00,000/-, whereas as per the version of the complainant, he claims to have given a hand loan of Rs.4,50,000/- to the accused. Inviting my attention to the aforesaid discrepancies in the case of the complaint, learned advocate had submitted that the complainant having failed to establish his case as pleaded in the complaint, the Courts below committed grave error in shifting the burden upon the accused to prove his defense. It was further submitted that in absence of the essential ingredient of legal debt related to the disputed cheque being proved, the applicant is required to be acquitted from the offense. He has therefore urged this court to allow the present application.

15. Ms.Archita Prajapati, learned advocate appearing for the respondent has objected to the aforesaid submissions. She has mainly relied upon the findings and reasons recorded by the Courts below. It was submitted that there being concurrent findings based on which the order of conviction is confirmed, this Court may not entertain the revision in absence of any perversity going to the root of the matter being established.

15.1 Referring to the disputed cheques, learned advocate had submitted that indisputably there is no challenge to the signature of the applicant on the aforesaid cheques. As against the query put by this Court with regard to the cheque issued from the account of Jai Industry through its proprietor, learned advocate had submitted that there is no challenge to the complaint at the instance of accused on the ground that complaint is not maintainable in absence of the aforesaid firm being joined as party to the proceedings. The only defense which has been raised by the accused is on the ground of misuse of cheques and the existence of legally enforceable debt related to the disputed cheques.

15.2 She has further invited my attention to the bank statement details of the complainant produced on record at Exh.18 to point-out that the amount of Rs.1,50,000/- was withdrawn by the complainant on 22[nd] November, 2014 by self cheque. Thereafter, on 25[th] November 2014, further amount of Rs.3,12,000/- was withdrawn by the complainant in cash. As against that, in the complaint, it is pleaded that on 22[nd] November, 2014, the accused had approached his house praying for hand loan of Rs.4,50,000/- and in order to help him, the need arose for withdrawal of the amount from the bank and accordingly had withdrawn the aforesaid amounts on respective dates. Thus, according to her, there is no discrepancy in the case pleaded by the applicant as against the documentary evidence produced on record. She has further invited my attention to the cross-examination, the evidence of witness Wasim Rajput recorded at Exh.27 as well as the evidence of Jainishbhai Bipinbhai Panchal at Exh.32, who have otherwise supported the case of the complainant and no contradictions has been brought on record despite being subjected to cross-examination at the instance of the accused.

15.3 She has under instructions submitted that in fact on three occasions, the attempts were made to realize the cheque amount. The first time, the cheques were deposited on 20th April, 2015. Thereafter, again on assurance of the respondent the cheques were second time presented on 25th June 2015. The attention of the respondent was invited to the cheques being once again dishonored. Considering the assurance given by the respondent, the cheques were third time deposited on 10th July, 2015. She has further submitted that despite the fact that the notice was duly served upon respondent at the address on which the Court summons were also served, the respondent had chosen not to respond to the legal notice and had failed to pay the amount. The complainant was therefore constrained to initiate legal proceedings.

15.4 She has relied upon the judgment of the Hon'ble Supreme Court in the case of *Sanjabij Tari Vs. Kishore S. Borcar and another* reported in *AIR online 2025 SC 980* to contend that once the execution of the cheque is admitted, the presumption under Section 118 of the Act that the cheque in question was drawn for consideration and the presumption under Section 139 of the Act that the holder of the cheque had received the same in discharge of legally enforceable debt or liability arises against the accused. She has further submitted that though the presumption contemplated under the aforesaid provisions is rebuttable the initial onus of proving that the cheque is not in discharge of any other liability is on the accused / drawer of the cheque.

15.5 Reliance was also placed on the decision of Hon'ble Supreme Court in the case of *Vinayak Purshottam Dube (deceased) through legal representatives Vs. Jayashree Padamkar Bhat and others* reported in *AIR 2024 SC 1386*. She has heavily relied upon the observations recorded in para 13 to para 23.

16. In rejoinder, learned advocate for the applicant - accused has placed reliance upon the decision of Hon'ble Supreme Court in the case of *Dashrathbhai Trikambhai Patel Vs. Hitesh Mahendrabhai Patel and another* reported in *2022 LiveLaw SC 830*. Reiterating his defense, it was submitted that the cheques did not represent legally enforceable debt. It was submitted that noticing the discrepancies in the alleged amount borrowed and the disputed cheque amount, it cannot

be said that offence under Section 138 of the Act has been made out. Learned advocate had emphasized on the fact that the cheque amount should relate to the correct amount. The offence under Section 138 of the Act is attracted only when the conditions incorporated in proviso,more particularly, proviso (b) to Section 138 which states that a notice demanding the payment of the “said amount” of money shall be made by the drawee of the cheque, is satisfied. Learned advocate has therefore prayed for allowing the revision application by quashing and *setting aside* the impugned order of conviction.

17. I have carefully considered the arguments of learned advocates appearing for the respective parties in light of the findings and reasons recorded by both the Courts. The short question which falls for consideration of the Court in the present revision application is as to whether on appreciation of record of the lower Courts any error can be found as to correctness or legality or propriety of any finding recorded in the impugned judgment and order of conviction of the applicant for the offence punishable under Section 138 Negotiable Instrument Act, 1881?

18. At the outset it is required to be noted that in order to attract charge of Section 138 of N.I. Act, the three essential ingredients which are required to be established by the complainant is that the cheque is issued in discharge of any legally enforceable debt or liability. Secondly, on presentation, the cheque has been returned unpaid. Thirdly,

despite service of legal demand notice on the drawer of the cheque, he has failed to make any payment within the stipulated period of 15 days from date of receipt of such notice. At the same time, the object underlying is to enhance the acceptability of cheques in settlement of liabilities by making the drawer liable for penalties in case of dishonor 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 have time and again opine that the intent behind criminalizing the act of issuing cheques without sufficient funds or for other specified reasons, is to promote financial discipline, discourage irresponsible practices and to allow more efficient and timely resolution of disputes compared to the tedious civil remedy which often involves long drawn litigation.

19. Bearing in mind the aforesaid object of the Act of 1881, it would also be appropriate to note the standard of proof expected in summary proceedings. The legislation in its wisdom, considering summary proceedings, has incorporated Section 118 and Section 139 of the Act which permits the Courts to raise presumption in favor of the complainant once the execution of the cheque is admitted. Section 118 of the act permits the Courts to raise presumption with regard to the fact that the cheque in question was drawn for consideration in favor of the complainant. Section 139 of the Act permits the Court to raise presumption of the fact that the holder of the cheque received the said cheque in discharge of legally

enforceable debt or liability which had arisen against the accused.

20. Having noted the aforesaid provisions of the Act, if the evidence on record is reappreciated in light of the arguments made, it is an undisputed fact that the signature on the disputed cheques have not been challenged by the applicant accused. On close appreciation of the cross-examination of the complainant it does not reveal any contradiction on the aforesaid aspect. The handing over of the cheque to the complainant by the accused is also not in dispute. Considering the suggestions put by the learned counsel for the accused in cross-examination to the complainant suggest that the defense is raised on the line that part payment of the amount borrowed has been received by referring to the statement of account of the bank of the accused. On appreciation of the cross-examination of the complainant, the complainant has admitted to the aforesaid suggestion by responding that on 7th April, 2015 cheque bearing no.46 for amount of Rs.25,515/- of Kotak Mahindra Bank, Shahibaug branch is reflected in the bank statement. He is unable to relate to the same immediately however had assured before the Court to bring on record any evidence in this regard. The complainant has further conceded to the acknowledgement of cheque bearing no.64 dated 22nd May, 2015 for amount of Rs.70,000/- of Kotak Mahindra Bank, Shahibaug branch. He has also admitted to the fact that earlier he had credited Rs.2,00,000/- to the accused and the same were repaid and thereafter has admitted to the fact that except for the present complaint no

other transaction has taken place between the parties. He has also admitted to the fact that the handwriting appearing in the first line is written by him. He has immediately clarified that the date and the other details have not been written by him.

21. Having appreciated the aforesaid evidence on record as against the list of evidence produced on record at Exh.41 by the accused, in my view, no error can be found with the conclusion drawn by the Courts below that the accused has miserably failed to establish his defence about part payment or misuse of cheque by the complainant. As rightly recorded by the Court below, no further question has been put to the complainant to explain as to the repayment of the amount received was towards the present transaction.

22. This brings me to the settled principles laid down by the Hon'ble Supreme Court in case of *Bir Singh Vs. Mukeshkumar* reported in *(2019) 4 SCC 197*, wherein in para 36, the Court has held that even a blank leaf voluntarily signed and handed over by the accused, which is towards some payment would attract presumption under Section 139 of the Negotiable Instrument Act, 1881, in absence of any cogent evidence to show that the cheque was not issued in discharge of the debt.

23. In view of the aforesaid legal position, the accused having failed to bring on record any evidence to prove that the amount so mentioned in the cheque does not represent the legal enforceable debt in favour of the complainant at the time

when the cheques were presented, there is no rebuttal of the presumption of the fact that the cheque was issued towards a legally enforceable debt stands uncontroverted. The fact that both the cheques have returned unpaid and despite service of legal demand notice on the drawer of the cheque, the applicant – accused having failed to respond to such legal notice and to make any payment within stipulated time period, the necessary ingredients of the offence under Section 138 of the Act gets attracted.

24. In view of the above discussion, the revision application fails. Resultantly, the impugned judgment and order dated 25th March 2019 passed by the learned Addl. Sessions Judge, Ahmedabad in Criminal Appeal no.94 of 2017 and judgment and order dated 19th August, 2017 passed by the learned 2nd Addl. Chief Judicial Magistrate, Ahmedabad in Criminal Case No.7601 of 2015 convicting the present applicant for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 stands confirmed. The applicant is hereby directed to appear before the concerned Court of Magistrate to undergo a sentence period of six months as imposed by the Courts below. In view of directions issued under Section 357 of the Code of Criminal Procedure, the applicant having deposited the cheque amount pending the proceedings and the same being permitted to be withdrawn by the complainant, no further order in this regard is passed.

25. With these observations, the revision application stands

disposed of. ***R. & P.,*** if any, are directed to be sent back to the concerned Courts.

Sd/-

(NISHA M. THAKORE, J.)

-: <u>FURTHER ORDER</u> :-

After the judgment was pronounced, learned advocate for the applicant prays for extension of time to surrender for further period of 8 (Eight weeks).

Considering his request and the fact that by way of interim relief, the time to surrender was extended pending the hearing of present application, the time to surrender is extended till period of 6 (Six) weeks from today.

Sd/-

(NISHA M. THAKORE, J.)

AMAR RATHOD.../sfs/14.08