IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC. APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 11160 of 2014

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE P. M. RAVAL

==

Approved for Reporting	Yes	No
		✓

==

GAURAV PRATAPBHAI DODIYA & ANR.
Versus
STATE OF GUJARAT & ANR.

==

Appearance:
MR PARTH S TOLIA(5617) for the Applicant(s) No. 1,2
MR. ARCHIT P JANI(7304) for the Respondent(s) No. 2
MR YUVRAJ BRAHMBHATT, APP for the Respondent(s) No. 1

==

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

Date : 21/08/2026

ORAL JUDGMENT

1. This application, under Section 482 of the Criminal Procedure Code, 1973 (the Code) is filed by the applicants seeking quashment of the Criminal Case No. 663 of 2012 filed in the Court of learned Metropolitan Magistrate, Court No. 36, Ahmedabad as well as the consequential proceedings emanating therefrom.

2. The case of the applicant is that the applicants are the son and father respectively. Since the applicant No. 1 herein wanted to go to Australia for further studies, one Sharvil Dave of Ahmedabad, allegedly, indulged in arrangement of overseas education, came to be contacted by the applicants and for Visa, as there was a need of about Rs.30 lakh, said Sharvil Dave assisted the applicants in arranging the funds by making them contacted with the respondent No. 2. As the wife of respondent No. 2 was doing business of finance, the deficit funds of Rs.6 lakh was arranged from her by paying Rs.75,000/- as Charges. Further, 3% interest per month was to be paid on the sum borrowed. Blank cheques were also given by the applicants. For the purpose, a bank account was opened in the Central Bank of India, Geeta Mandir Branch, Ahmedabad and a cheque book was gotten. Wife of respondent No. 2 – Shwetalben advanced Rs.5,20,000/- and Rs.1 lakh was arranged by the applicant No. 1 and thus, an amount of Rs.6,20,000/- came to be placed in a fixed deposit, however, the respondent No. 2 kept the original FDR with him and a copy thereof was given to the applicants. Cheque book was also kept by the respondent No. 2 and a declaration was also got executed to the effect that no duplicate cheque book shall be availed by the applicants and no amount shall be withdrawn by them. The applicants also paid Rs.18,000/- towards interest. Even after such an exercise, the applicant No. 1 did not get Visa and the reason given was of no deposit with the said bank account. Upon inquiry, it was found by the applicants that the amount of FDR

was withdrawn on the very same day by the wife of the respondent No. 2 without their knowledge and hence, upon contacting Sharvil Dave and his wife, the mistake was admitted and they returned the amount of Rs.6,84,000/- however, the applicants forgot to take back the cheques that were given. On 30.01.2012 the applicants received a Legal Notice from the respondent No. 2 under the provisions of the Negotiable Instruments Act, 1881 (NI Act) *inter alia* stating that aforesaid amount of Rs.6,84,000/- was given to the applicants as a loan and the same is unpaid. The applicants replied the said Legal Notice, however, the criminal case in question came to be filed by the respondent No. 2. Hence, this application for the quashing the said criminal case.

2. Heard, learned advocates for the respective parties and perused the material on record.

2.1 The bone of contention of the learned advocate for the applicants is that, while the applicants are the victims at the hands of the respondent No. 2, the present criminal case itself, is not sustainable in the eyes of law inasmuch as the cheque in question was issued in favour of the wife of the respondent No. 2 who has already expired even prior to issuance of the Legal Notice under the provisions of the NI Act and the present criminal case is filed by the respondent No. 2 as a legal heir on the basis of a Will without there being any Letter of Administration and/or

Succession Certificate and thus, he cannot be termed as "Holder in Due Course" as defined under Section 9 of the NI Act nor can he be termed as a "Payee" under Section 7 of the NI Act. Accordingly, it is urged that the impugned complaint being not maintainable, it is required to be quashed and set aside as barred by law.

2.2 In support, the learned advocate for the applicants relied upon several decisions, more particularly, ***the decision of the coordinate Bench dated 28.04.2017 rendered in Special Criminal Application No. 956 of 2013***.

3. *Conversely*, learned advocate Mr. Archit Jani for the respondent No. 2, while fairly conceding that no Letter of Administration and/or Succession Certificate is available or on record, submitted that the respondent No. 2 is the husband of the deceased in whose favour cheque in question was issued and a Will was executed in favour of the present respondent No. 2 by the deceased and accordingly, being legal heir of the deceased, he can be very well termed as the "Holder in Due Course". Accordingly, he submitted that the criminal complaint, at the behest of the respondent No. 2, is very much maintainable and eventually, he urged to reject this application.

3.1 In support, the learned advocate for the respondent No. 2 relied upon following decisions:

i) TRL Krosaki Refractories Limited v. SMS Asia Private Limited and Another, (2022) 7 SCC 612;

ii) A. C. Narayanan v. State of Maharashtra and Another and G. Kamalkar v. Surana Securities Limited and Another, (2014) 11 SCC 790;

iii) U. Ponnappa Moothan Sons, Palghat v. Catholic Syrian Bank Ltd. and Others, (1991) 1 SCC 113;

iv) Yogeshkumar Keshavlal Kamdar v. Jamnadas Bhagwandas Vakharia, 2022 (0) AIJEL-HC 243886.

4. Heard, the learned advocates for the respective parties and perused the material on record as also gone through the decisions relied on by the learned advocates for the respective parties.

4.1 Prior to assessing the factual matrix on the touchstone of criminal jurisprudence, it is apposite to reinforce the settled legal position governing the scope, ambit, and limits of the inherent jurisdiction vested under Section 482 of the Code. The jurisprudential parameters regulating the exercise of this extraordinary power have been authoritatively catalogued by Hon'ble Supreme Court in a long line of precedents, chief among them being the authoritative in the case of ***State of Haryana v. Bhajan Lal [AIR 1992 SC 604]***. Therein, Hon'ble Supreme Court crystallized seven distinct, illustrative categories of cases where judicial intervention under Section 482 of the Code or Article 226 of the Constitution is necessitated to secure the ends of justice and clip any abuse of the process of Court. The relevant portion of

Paragraph 102 of the said judgment is extracted below:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under

Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

4.2 Evaluating the present applications on the anvil of the principles enunciated in ***Bhajan Lal (supra)***, this Court has to determine whether the allegations in the FIR, even when accepted at face value, satisfy the essential statutory ingredients of offence alleged. This Court must ensure that criminal machinery is not permitted to degenerate into an engine of harassment where liability under criminal law is completely absent.

4.3 The case of the applicants is that, in fact, they are the victim of the act of the respondent No. 2. Though issuance of the cheque in question is not disputed by the applicants but a statutory contention is raised by them so as to suggest that the present initiation of criminal proceedings at the hands of the respondent No. 2 herein is not sustainable as barred by law inasmuch as, the respondent No. 2 cannot be termed as a "Holder in Due Course" as defined under the NI Act based only on a Will of his wife *sans* there being any valid Succession and/or Letter of Administration after death of wife of the respondent No. 2 in whose favour, indisputably, the cheque in question was issued.

5. Having regard to the rival submissions, material on record as well as considering the decisions relied on by the either side, it appears that the issue at hand is no more *res integra*. The coordinate Bench, in the decision relied upon by the learned advocate for the applicants, rendered in ***Special Criminal Application No. 956 of 2013*** has, after considering the legal position as well as various pronouncements on the subject, held as under:

> *"6.1 The legal connotation "holder in due course" has twin important essentials to carry. A person in order to become a holder in due course within the meaning of Section 9 of the Act must be in possession of a promissory note, bill of exchange or cheque, as is in the present case; at the same time, mere becoming possessor of the cheque etc., would not suffice. A person to the possessor of the instrument has to be for a consideration. It is indispensible ingredient for being clothed with the legal capacity of "holder in due course" is that the person in possession of the instrument, must have been in the possession for some consideration.*

6.2 *Therefore, it logically falls that merely being an heir of payee, though may be in possession of instrument, would not automatically make such heir or legatee a 'holder in due course' within the meaning of Section 9 of the N.I. Act. The concept of holder in due course does not recognize such position, besides which the ingredient of being a possessor for consideration has to exist. Respondent No.2 wife, in absence of possessing such ingredient-capacity, cannot claim locus standi in law to become a complainant under Section 138 of the Act*.

6.3 *The claimed capacity of heir or legatee or right to inheritance by themselves would not attract or invest the person in possession of the instrument with the capacity as 'holder in due course' under the N.I. Act. Therefore upon death of the payee, heir of legatee thereof does not step into the shoe of the deceased payee merely because he happens to be an heir or a relative or a legatee. Such person unless is in possession of the instrument and unless such possession is for consideration, cannot file a complaint posing himself or herself as legal heir*.

6.4 *Thus the respondent No.2-wife only on the ground of she being a wife or on the ground that she was an heir of the husband to receive money cannot be treated as "holder in due course" within the meaning of Section 9 of the Act. A locus standi for her cannot be conceived in law to be one entitled to file a complaint under the N.I. Act. If she is claiming any right over the amount of cheque in capacity of heir, her remedy would be in civil law. Complaint at her instance under the N.I. Act, however cannot be maintainable, she having no locus standi to be a complainant under the N.I. Act."*

(emphasis supplied)

5.1 Thus, the Court, in the aforesaid decision, has categorically observed that the respondent No. 2 – Wife (in the case on hand, husband) only on the ground of she being a wife or on the ground that she was an heir of the husband to receive money, cannot be treated as "holder in due course" within the meaning of Section 9 of the (NI) Act. A *locus standi* for her cannot be conceived in law to be one entitled to file a complaint under the NI Act and if she is claiming any right over the amount of cheque in capacity of heir, her remedy would be in civil law. The case on hand, in the considered opinion of this Court, is squarely covered by the said decision as in the present case, it is the husband – respondent No. 2 herein who claiming to be an heir of the deceased wife – Holder in Due Course of the cheque in question, based only on a Will, without there being any Succession Certificate and/or Letter of Administration, has initiated the criminal proceedings under the provisions of Section 138 of the NI Act and as a part thereof, issue the Legal Notice to the applicants after the death of his wife.

5.2 So far as decisions relied on by the learned advocate for the respondent No. 2 are concerned, if the decision in ***U. Ponnappa Moothan Sons, Palghat (supra)*** is referred, the same talks about "Holder in Due Course" and presumption in his favour under Section 118(g) of the NI Act. The same being a settled legal position and settled proposition of law, the Court cannot have any dispute with regard thereto. But the said decision is not applicable to the facts of the case and for the reason that the present respondent No. 2 being only "Holder" of the cheque, cannot fall under the definition of "Holder in Due Course".

5.3 Another decision relied on by the learned advocate for the respondent No. 2 is in ***TRL Krosaki Refractories Limited (supra)***. In the said case, the Court observed that the issue of proper authorization and knowledge can only be an issue for trial. Entertaining a petition under Section 482 CrPC to quash the order taking cognizance on the aforesaid ground would be unjustified. In the case on hand, while the facts are completely different, there is also no question of proper authorization etc. Thus, the said decision also would be of no avail to the respondent No. 2.

5.4 Next is the decision in the case of ***A. C. Narayanan v. State of Maharashtra (supra)***. In the said decision the Court held that filing of complainant by through the power of attorney of holder is perfectly legal and competent. However, it is clarified that power of attorney cannot file complaint in his name. In the case on hand, again it is reiterated that the facts are different. The respondent No. 2 who is not the "Holder in Due Course" and only the "Holder" of the cheque has motioned the criminal machinery under the provisions of the NI Act. Thus, this decision is also not helpful to the respondent No. 2.

5.5 Last but not the least, the learned advocate for the respondent No. 2 has relied on a decision in ***Yogeshkumar***

Keshavlal Kamdar (supra), wherein, the Court held that Section 256 has no application in facts of that case as cognizance was taken and summons was issued by the Court and hence, on death of the original complainant, proceedings do not abate and legal heirs of original complainant are entitled to come forward and ask for their substitution. In the case on hand, admittedly and indisputably, prior to filing of the criminal case, even before issuing the Legal Notice, the wife of the respondent No. 2 had died in whose favour the cheque was issued and hence, this decision would also of no help to the respondent No. 2.

6. As a corollary to the above, the present application requires favourable consideration inasmuch as, as referred to herein above, the respondent No. 2 herein cannot be termed as a "Holder in Due Course" as defined in law and the only remedy, if at all, remains with him is the civil remedy and the case on hand falls in clause (6) of the ***Bhajan Lal's Case***.

7. *In fine*, the application succeeds and is allowed, accordingly. Criminal Case No. 663 of 2012 filed in the Court of learned Metropolitan Magistrate, Court No. 36, Ahmedabad as well as the consequential proceedings emanating therefrom are set aside *qua* the applicants. Rule is made absolute, accordingly.

7.1 It goes without saying that the quashment of the criminal case shall not have any bearing on the civil remedies filed or to be

NEUTRAL CITATION
2026:GUJHC:53588

filed by the respondent No. 2 and the same shall be decided in accordance with law, on merits.

[P. M. Raval, J.]

hiren/2tss21826