



1) Received on : 27 – 10 – 2025
 Registered on : 27 – 10 – 2025
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 Registered on : 30 – 03 – 2026
Decided on : 20 – 07 – 2026
 Decided on : Ys – Ms – Ds
 03 – 08 – 23
 00 – 03 – 20

Ex. _____

IN THE COURT OF THE SESSIONS JUDGE, BHAVNAGAR

(1) Criminal Appeal No.214 of 2025

Vijaybhai Chandubhai Dhamecha.
 Age: 45, Occu: Business,
 Add: Line No.8, Beside Mohan
 Dish-Vala, Rasala Camp, Bhavnagar.

.... Appellant
 (Original Accused)

VERSUS

1) Pradipbhai Narayanbhai Chhagnani,
 Age: 40 years, Occu: Business,
 Add: Opp. Devu-Ma Temple,
 Sindhunagar, Mafatnagar, Bharatnagar
 Road, Bhavnagar. (Original Complainant)

2) The State of Gujarat. Respondents

: Appeals under Sec.415 of BNSS, 2023 :

Appearance :

Learned Advocate for the Appellant, Mr.KB Shukla
 Learned Advocate for the Respondent No.1, Mr.HT Jani
 Learned PP for the Respondent No.2 - State, Mr.MR Joshi

(2) Criminal Revision No.59 of 2025

1) Pradipbhai Narayanbhai Chhagnani,
 Age: 41 years, Occu: Business,
 Resi: Opp. Devu-Ma Temple,
 Sindhunagar, Mafatnagar, Bharatnagar
 Road, Bhavnagar. Appellant
 (Original Complainant)

VERSUS

- 2) Vijaybhai Chandubhai Dhamecha,
Age: 43, Occu: Business,
Add: Line No.8, Beside Mohan
Dish-Vala, Rasala Camp, Bhavnagar. **(Original Accused)**
- 2) The State of Gujarat,
(Notice be served through
the DGP),
Court Compound, Bhavnagar. **Respondents**

: Appeals under Sec.438 of BNSS, 2023 :

Appearance :

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Learned Advocate for the Appellant, Mr.SK Kesari
Learned Advocate for the Respondent No.1, Mr.KB Shukla
Learned PP for the Respondent No.2 - State, Mr.MR Joshi

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: J U D G M E N T :

1. The appellant of Criminal Appeal No.214/2025 who was an accused of a Criminal Case No.15270/2021 has preferred the above referred Appeal *inter alia* challenging the order of conviction, sentence and fine/compensation whereby, the present appellant is directed to undergo simple imprisonment of six months and was also directed to pay the cheque-amount of Rs.3,00,000/- as compensation, failing which he is also directed to undergo the default sentence of one month's simple imprisonment. This order of conviction was passed by the Ld. 2nd Additional Chief Judicial Magistrate (Sp.Nego.Court), Bhavnagar (hereinafter referred as 'the Ld. Magistrate') on 25-09-2025.

1.1 Whereas, the original complainant has preferred a Criminal

Revision Application No.59/2026 and challenged the above referred order *inter alia* praying that the order to undergo simple imprisonment of six months may be enhanced to two years' simple imprisonment and also for the enhancement of amount of compensation.

2. For the sake of brevity and convenience, the parties to the present Appeal are hereinafter referred in their original status as they were arrayed as parties before the Ld. Trial Court.

2.1 Regard being had to the parallelism of facts and question of law involved in both the conviction appeals and revision applications preferred by the original complainant for enhancement of sentence of imprisonment and amount of compensation, these cases are being heard and decided analogously by the common judgment.

3. The factual matrix leading to the present Appeal are as under :

3.1 The appellant of Criminal Revision Application No.59/2026 – original complainant had preferred a private complaint for the offence under section-138 of the NI Act which was registered as a Criminal Case No.15270/2021 *inter alia* alleging against the original accused and appellant of Criminal Appeal No.214/2025 that both were known to each other and as the accused was in the dire need of money, he requested the complainant to advance a hand-loan and accordingly, the complainant advanced Rs.3,00,000/- in the month of May, 2020;

Rs.3,00,000/- in the month of July, 2022 and Rs.6,00,000/- in the month of October, 2020 and as such, the complainant had advanced Rs.12,00,000/- in favour of accused and the accused assured the complainant that the said amount of Rs.12,00,000/- shall be re-paid as early as possible. Since the accused could not fulfill his above referred promise, he issued 3 cheques from his account No.007110400038530 being (1) cheque No.738894 dated 04-09-2021 of Rs.1,00,000/- of IDBI Bank, Bhavnagar, (2) cheque No.738895 dated 04-09-2021 of Rs.1,00,000/- of IDBI Bank, Bhavnagar and (3) cheque No.738896 dated 04-09-2021 of Rs.1,00,000/- of IDBI Bank, Bhavnagar. The above referred cheques were deposited for encashment by the complainant in the State Bank of India, Kalanala Branch, Bhavnagar, but the above referred 3 cheques returned unpaid on 06-09-2021 with an endorsement "Funds Insufficient" and, therefore, the complainant issued a statutory notice under section-138(b) of the NI Act on 04-10-2021 which was served upon the accused on 05-10-2021. In spite of service of the notice, the accused neither complied nor replied the said notice and, therefore, the complainant preferred the above referred complaint on 17-11-2021 for the offence punishable under section-138 of the NI Act.

3.2 After hearing the Ld. Advocates for the parties and after appreciating the oral as well as documentary evidence available on record, the Ld. Magistrate was pleased to convict the accused *vide* order of conviction, sentence and fine/compensation, dated 25-09-2025 and the accused was directed to undergo simple imprisonment of six months and was also directed to pay the cheque-amount of Rs.3,00,000/- as compensation, failing which

he is also directed to undergo the default sentence of one month's simple imprisonment. The above referred order judgment and order of conviction, sentence and find/compensation is challenged by the accused by preferring a Criminal Appeal No.214/2025 whereas, the original complainant has preferred a Criminal Revision Application No.59/2026 for enhancement of the sentence and also for enhancement of compensation.

4. The Ld. Advocate for the original accused – Appellant of Criminal Appeal No.214/2025 has raised only one contention and submitted that the appellant does not challenge the legality and validity of the order of conviction, sentence and compensation passed by the Ld. Magistrate. However, he relied upon the ratio laid down in the case of **Sanjabij Tari Vs. Kishore S.Borcar, 2025(4) Crimes 13** and submitted that the accused has deposited the entire cheque-amount before the Court of Ld. Chief Judicial Magistrate and he is also ready and willing to pay 7.5% amount of the cheque-amount as cost before the DLSA, Bhavnagar and he ultimately submitted that based on the ratio laid down by the Hon'ble Supreme Court in the above referred case, the appellant may be granted the benefit under the Probation of Offenders Act, 1958.

5. *Per contra*, the Ld. Advocate for the original complainant submitted that the complainant has not only preferred the Criminal Revision Application for enhancement of sentence, but has also prayed for enhancement of compensation and since the complainant has preferred the revision application for enhancement of sentence and compensation, no benefit under the

Probation of Offenders Act, 1958 may be extended in favour of the original accused.

6. The Ld. PP submitted that the accused has committed one another offence and since the accused has committed another offence of the similar nature, the benefit under the Probation of Offenders Act, 1958 may not be extended in favour of the original accused.

7. I have heard the Ld. Advocates for the parties.

8. From the above referred rival submissions, the following points emanate for determination of the present Appeal :

1. Whether the appellant – original accused is entitled to get benefit under the Probation of Offenders Act, 1958 ?
2. What order ?

8.1 For the reasons stated hereinafter, my findings on the above points are as under :

1. In the affirmative.
2. As per final order.

: REASONS :

9. **POINT NO.1 :**

9.1 Before I proceed to decide the above referred issue, I may note down one relevant and important legal aspect involved in Criminal Revision Application No.59/2026. It is not in dispute

that the complainant has preferred the above revision application for enhancement of sentence and enhancement of compensation. If we carefully read provisions contained under section-372 of Cr.PC and section-413 of BNSS, it becomes clear that for enhancement of compensation, the victim has to prefer an Appeal under section 372 of Cr.PC or section-413 of the BNSS and as such, the revision application at the behest of complainant for enhancement of compensation is not maintainable. However, the revision at the behest of complainant is maintainable for enhancement of sentence. In that view of legal position, the revision application preferred by the original complainant for enhancement of compensation is dismissed.

9.2 As noted hereinabove, the original accused has prayed for granting of benefit under the Probation of Offenders Act, 1958 and he has relied upon the ratio laid down by the Hon'ble Supreme Court in the case of Sanjabij Tari (*supra*) wherein, in paragraph-38 and 39, it has been held as under :

Sanjabij Tari Vs. Kishore S.Borcar, 2025(4) Crimes 13

"38. Since a very large number of cheque bouncing cases are still pending and interest rates have fallen in the last few years, this Court is of the view that it is time to 'revisit and tweak the guidelines'. Accordingly, the aforesaid guidelines of compounding are modified as under:-

(a) If the accused pays the cheque amount before recording of his evidence (namely defence evidence), then the Trial Court may allow compounding of the offence without imposing any cost or penalty on the accused.

(b) If the accused makes the payment of the cheque amount post the recording of his evidence but prior to the pronouncement of judgment by the Trial Court, the Magistrate may allow compounding of the offence on payment of additional 5% of the cheque amount with the

Legal Services Authority or such other Authority as the Court deems fit.

(c) Similarly, if the payment of cheque amount is made before the Sessions Court or a High Court in Revision or Appeal, such Court may compound the offence on the condition that the accused pays 7.5% of the cheque amount by way of costs.

(d) Finally, if the cheque amount is tendered before this Court, the figure would increase to 10% of the cheque amount.

39. This Court is of the view that if the Accused is willing to pay in accordance with the aforesaid guidelines, the Court may suggest to the parties to go for compounding. If for any reason, the financial institutions/complainant asks for payment other than the cheque amount or settlement of entire loan or other outstanding dues, then the Magistrate may suggest to the Accused to plead guilty and exercise the power under Section 255(2) and/or 255(3) of the Cr.P.C. or 278 of the BNSS, 2023 and/or give the benefit under the Probation of Offenders Act, 1958 to the Accused.*

* Emphasis supplied

9.3 If we carefully peruse the observations made by the Hon'ble Supreme Court in the case of **Sanjabij Tari** (*supra*), it clearly appears that, if for any reason, the complainant asks for payment other than the cheque amount, then the Magistrate may suggest to the accused to plead guilty and exercise the power under Section 255(2) and/or 255(3) of the Cr.P.C. or 278 of the BNSS, 2023 and/or give the benefit under the Probation of Offenders Act, 1958 to the Accused.

9.4 Thus, it is specifically held by the Hon'ble Supreme Court that if the complainant does not agree to compound the case, then in that circumstance, the Appellate Court can impose cost of 7.5% of the cheque-amount to be deposited in DLSA and the Court can grant benefit of probation to the accused under the

Probation of Offenders Act, 1958. Herein the present case, the original complainant - revisionist is not ready and willing to accept the cheque amount (already deposited by the appellant - convict before the Ld. Trial Court) and asked for payment other than the cheque amount, therefore, this Court suggested the appellant- convict to plead guilty. Accordingly, the Ld. Advocate for the appellant- convict upon the instructions of the appellant submitted that appellant does not challenge the orders of conviction and sentence and ultimately requested to extend the benefit under the Probation of Offenders Act, 1958. In that view of the matter and further taking into consideration the ratio laid down in the case of **Sanjabij Tari** (*supra*), this Court thinks fit to extend the benefit under the Probation of Offenders Act, 1958, in favour of the appellant - convict on the condition that the original accused shall pay the cost of 7.5% of the cheque-amount which shall be deposited in DLSA, Bhavnagar within 15 days from today.

9.5 The Ld. PP has raised a contention that the present appellant – original accused has been convicted in another case for an offence punishable under section-138 of the NI Act and, therefore, he is not entitled to get any benefit under the Probation of Offenders Act, 1958.

9.6 It is required to be noted that the bare perusal of the complaint depicts the fact that it was a single transaction whereby, original complaint had advanced Rs.3,00,000/- in the month of May, 2020; Rs.3,00,000/- in the month of July, 2022 and Rs.6,00,000/- in the month of October, 2020 and as such, the

complainant had advanced Rs.12,00,000/- in favour of accused. Thus, even from the contents of the complainant, it becomes clear that the complainant had advanced Rs.12,00,000/- in favour of the accused in a single transaction and two Criminal Complaints were filed by the complainant against the accused. Therefore, in my opinion, it cannot be said that the accused has committed similar offence.

9.7 Since, this Court has relied upon the ratio laid down in the case of Sanjabij Tari (*supra*), the benefit is granted under the Probation of Offenders Act, 1958 is required to be extended in favour of the accused. In that view of the matter, I do not find it fit to entertain the Criminal Revision Application preferred by the complainant for enhancement of sentence. At the cost of repetition, it is required to be observed that the Criminal Revision Application for enhancement of compensation is not maintainable and, therefore, the Revision Application *inter alia* praying enhancement of compensation is also dismissed.

9.8 Since, this Court has extended benefit under the Probation of Offenders Act, 1958 in favour of the original accused and as the accused has not challenged the order of conviction and sentence, I deem it fit to confirm the impugned judgment and order passed by the Ld. Magistrate *qua* order of conviction and sentence is concerned. Since, the accused has already deposited the cheque-amount before the Court of Ld. Chief Judicial Magistrate and also keeping mind the ratio laid down in the case of Sanjabit Tari (*supra*), no interference is also required as long as the order of awarding of additional compensation is

concerned. In that view of the matter, the present Appeal is partly allowed and the benefit under the Probation of Offenders Act, 1958 is extended in favour of the accused on the following conditions :

: ORDER :

- 1) The Criminal Revision Application No.59/2026 is hereby dismissed.
- 2) The Criminal Appeal No.214/2025 is hereby partly allowed.
- 3) The order of conviction and sentence, dated 25-09-2025, passed by the Ld. 2nd Additional Chief Judicial Magistrate, Bhavnagar in Criminal Case No.15270 of 2021, is hereby confirmed.
- 4) The appellant – original accused is released on probation of good conduct and he is directed to furnish bond of **Rs.5,000/- (Rupees Five Thousand)** before the concerned Police Station, stating that he will maintain peace and will not act in any manner which may adversely affect the peace and tranquility of others.
- 5) The appellant is also directed to deposit cost of 7.5% of the cheque amount before the DLSA, Bhavnagar, within seven days from today.
- 6) The appellant is released on his entering into the above referred bond and it is directed that the appellant shall

appear and receive sentence as and when called upon.

- 7) The appellant shall furnish the details of his permanent residence/registered office and shall also abstain from the intoxicants and shall present himself either before the Police or the Probation Officer as and when they are called upon.
- 8) If the above referred conditions are violated, the concerned Police will be at liberty to arrest the appellant without there being any formal warrant issued by this Court.
- 9) The original complainant shall be summoned by the Nazir of the Chief Court, Bhavnagar and the entire amount lying with the Chief Court, Bhavnagar shall be disbursed in his favour by account payee cheque, after proper verification.
- 10) Yadi to be sent to the concerned Police Station.
- 11) With the above referred observations, the present appeal is party allowed.

Pronounced in the open Court on this 20th day of July, 2026.

Date : 20-07-2026.
Bhavnagar.

(H.S.Mulia)
Sessions Judge
Bhavnagar
Unique ID Code No.GJ00915

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