

BEFORE THE HON'BLE 3rd ADDL. SESSIONS JUDGE
JAMNAGAR

Order Passed Below Exh.-1

in

Criminal Appeal No. : 80/2026

APPEARANCE :-

Ld. Advocate for the Appellant	<i>Mr. D.K. Gachchar</i>
Ld. Advocate for the Respondent No. 2	<i>Mr. J.N. Zala</i>
Ld. A.P.P. for the State	<i>Mr. D.G.P.</i>

- (1). The Appellant is the Original Accused and the respondent No.2 is the Original Complainant and here-in-after they are referred as Accused and Original Complainant respectively, for the sake of brevity.
- (2). The Appellant/Original Accused has challenged the Judgment and Order dated 30/01/2026, passed by 5th Additional Chief Judicial Magistrate, Jamnagar, wherein the Ld. Magistrate was pleased to convict the Accused under Section 255(2) of Code of Criminal Procedure, 1973, for the offence punishable under Section 138 of the Negotiable Instrument Act, 1881 and sentenced the Accused for simple imprisonment 1 Year and further directed to pay compensation of Rs.4,00,000/- within three months and in case of default in payment of the said amount the Accused will have to undergo

simple imprisonment of 03 months.

- (3). The Original Complainant as well as Accused and their Ld. Advocates had remained present before this Court and filed compromise pursis at Exh.-9 declaring that the matter is being settled between the parties out of Court. It is jointly submitted that if the parties are being permitted to compound the offence and the sentence is being quashed and set aside in the interest of justice, then it will meet the end of justice.
- (4). When the parties have settled amicably the dispute between them and the amount is paid up by the Accused to the Original Complainant, then it will be in the interest of justice to permit the parties to compound the offence and to quash and set aside the sentence of imprisonment as the other part of fine / compensation is being complied with substantial, out of Court.
- (5). Section 147 of Negotiable Instrument Act, 1881, makes offence punishable under Section 138 of Negotiable Instrument Act, 1881,

compoundable.

(6). In ¹**O.P. DHOLAKIA Vs. STATE OF HARYANA**, a division bench of Supreme Court had permitted the compounding of the offence even though the petitioner's conviction had been upheld by all the three designated forums. Taking into consideration the nature of the offence in question and the fact that the complainant and the accused have already entered into a compromise, we think it appropriate to grant permission in the peculiar facts and circumstances of the present case, to compound. Similar reliefs were granted in case of ²**SIVASANKARAN Vs. STATE OF KERALA & Anr**, ³**KISHORE KUMAR Vs. J. K. CORPORATION Ltd.** and ⁴**SAILESH SHYAM PARSEKAR Vs. BABAN**, among other cases.

(7). If the original complainant comes to the Court and says that he is withdrawing himself from prosecution on account of compromise and he

1 *O.P. DHOLAKIA Vs. STATE OF HARYANA : (2000) 1 SCC 672*

2 *SIVASANKARAN Vs. STATE OF KERALA & Anr : (2002) 8 SCC 164*

3 *KISHORE KUMAR Vs. J. K. CORPORATION Ltd. : (2004) 12 SCC 494*

4 *SAILESH SHYAM PARSEKAR Vs. BABAN : (2005) 4 SCC 162*

has compounded the matter, then the conviction and sentence have to be set aside, as held by the Hon'ble Supreme Court in Case of ⁵**RAMESH SOM PATEL Vs. DINESH ACHALANAND RATHI.**

- (8). Though compounding requires consent of both parties, even in absence of such consent, the Court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused as held by the Hon'ble Supreme Court (Coram : Hon'ble Justice Adarsh Kumar Goel and Hon'ble Justice Uday Umesh Lalit, JJ) in Case of ⁶**METERS AND INSTRUMENTS (P) Ltd. Vs. KANCHAN MEHTA.**

- (9). In view of submission that the requirement of deposit of the costs will act as a deterrent for delayed composition, since at present, free and easy compounding of offences at any stage, however belated, gives an incentive to the drawer of the cheque to delay settling the cases

⁵ *RAMESH SOM PATEL Vs. DINESH ACHALANAND RATHI : 2004 SCC OnLine Guj 469*

⁶ *METERS AND INSTRUMENTS (P) Ltd. Vs. KANCHAN MEHTA : (2018) 1 SCC 560 = 2017(4) RCR(Criminal) 476 = Cr.A. 1731/17, D/- 5/10/17*

for years and an application for compounding made after several years not only results in the system being burdened, but the complainant is also deprived of effective justice. The Hon'ble Supreme Court (Coram : Hon'ble Chief Justice of India Mr. K.G. Balakrishnan, Hon'ble Justice Mr. P. Sathasivam and Hon'ble Justice Mr. J. M. Panchal, JJ) issued several guidelines in case of **⁷DAMODAR S. PRABHU Vs. SAYED BABALAL H.**, as follow :

GUIDELINES :

- (a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.
- (b) If the accused does not make an application for compounding as

⁷ **DAMODAR S. PRABHU Vs. SAYED BABALAL H.**
: 2010(5) SCC 663 = Cr.A. No. 963/2010, D/- 3/5/10

aforesaid, then if an application for compounding is made **before the Magistrate** at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay **10% of the cheque amount** to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made **before the Sessions Court** or a High Court **in revision or appeal**, such compounding may be allowed on the condition that the **accused pays 15% of the cheque amount by way of costs.**

(d) Finally, if the application for compounding is made before the **Supreme Court**, the figure would increase to **20%** of the cheque amount.

It was also clarified that any costs imposed in accordance with these guidelines should be deposited with the Legal Services Authority

operating at the level of the Court before which compounding takes place. For instance, in case of **compounding during the pendency of proceedings before a Magistrate's Court or a Court of Sessions, such costs should be deposited with the** District Legal Services Authority. Likewise, costs imposed in connection with composition before the High Court should be deposited with the State Legal Services Authority and those imposed in connection with composition before the Supreme Court should be deposited with the National Legal Services Authority.

It is further held that that the judicial endorsement of the above quoted guidelines could be seen as an **act of judicial law-making** and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act. We have already explained that the scheme contemplated under Section 320 of the CrPC cannot be followed in the strict sense. In view

of the legislative vacuum, we see no hurdle to the endorsement of some suggestions which have been designed to discourage litigants from unduly delaying the composition of the offence in cases involving Section 138 of the Act. The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation. In the status quo, valuable time of the Court is spent on the trial of these cases and the parties are not liable to pay any Court fee since the proceedings are governed by the Code of Criminal Procedure, even though the impact of the offence is largely confined to the private parties. Even though the imposition of costs by the competent court is a matter of discretion, the **scale of costs has been suggested in the interest of uniformity**. The competent Court can of course reduce the costs with regard to the specific facts and circumstances of a case, while recording reasons in writing for such variance. Bonafide litigants should of course contest the proceedings to their logical end. Even in the past, this Court has used its power to do complete justice under Article 142 of the

Constitution to frame guidelines in relation to subject-matter where there was a legislative vaccum.

(10). Applying the ratio decidendi of **DAMODAR S.PRABHU** and of **M/s. METERS AND INSTRUMENTS Pvt. Ltd.** (*supra*) and the guidelines framed therein, on the strength of compromise being arrived at between accused and the complainant, I feel persuaded to exercise appellate jurisdiction for doing real and substantial justice in the matter for the administration of which alone the Courts exist. Accordingly, I prefer to give priority to the compensatory aspect of remedy over the punitive aspect in the matter in the wake of settlement of dispute and compromise being arrived at between the rival parties.

(11). In view of foregoing discussion, the instant appeal deserves to be allowed, while acknowledging their compromise, offence under Section 138 of Negotiable Instrument Act, 1881, is hereby compounded by resorting to Section 147 of the said Act and it obviously entails

acquittal of appellant.

- (12). However, taking into account the fact that appellant has caused undue delay in making endeavour for compounding of offence in terms of guidelines framed by the Supreme Court in **DAMODAR S. PRABHU** and **M/s. METERS AND INSTRUMENTS Pvt. Ltd.** (*supra*), in the backdrop of peculiar facts of the case, the Accused is required to be imposed appropriate Court. I have also considered the decision of the Hon'ble Supreme Court (Coram : Hon'ble Mr. Justice Sudhansa Jyoti Mukhopadhaya and Hon'ble Mr. Justice Abay Manohar Sapre, JJ) delivered in case of **⁸VEMULA ASHWINI KUMAR Vs. M/s. RECO AGROTECH Ltd.**, The Accused had settled the dispute at very initial stage of this Appeal and looking the condition of the Accused and cheque amount is total Rs. 4,00,000/- it will be just and proper to impose 7.5% cost i.e. **Rs. 30,000/-**, with District Legal Services Authority, Jamnagar, within a period of two weeks and it will meet end of justice. In case, the Appellant fails to deposit

8 ***VEMULA ASHWINI KUMAR Vs. M/s. RECO AGROTECH Ltd.***
: Cr.A 207/15, D/- 30/1/15 = 2015(2) NIJ 118 = 2015(2) CCR 236

said amount within the stipulated period of two weeks, this order shall stand automatically annulled.

(13). In view of the reasons stated here-in-above and considering the compromise pursis at Exh.-9, the Judgment and Order dated 30/01/2026 is partly required to be modified to the extent and quashing the part of sentence of simple imprisonment and therefore, I am passing following FINAL ORDER :

:- FINAL ORDER :-

- **The appeal is partially allowed.**
- **The Accused - Appellant is directed to deposit the amount of cost of Rs.30,000/- (Rupees Thirty Thousand only), with District Legal Services Authority, Jamnagar, within a period of two weeks from the date of this Order. The Accused - Appellant shall declare on oath with copy of cost deposit receipt, before this Hon'ble Court as well as**

before the Hon'ble Trial Court, without fail in two weeks from date of this Order.

- **On depositing the amount of cost as aforesaid in stipulated time, the Judgment and Order dated 30/01/2026 passed in Criminal Case No. 9300/2025 by the 5th Additional Chief Judicial Magistrate, Jamnagar, shall stand quashed and set aside. The parties are permitted to compound the offence punishable under Section 138 of Negotiable Instrument Act, 1881, in view of compromise pursis at Exh.-9 Accordingly, the impugned order dated 30/01/2026 of sentence of imprisonment shall also stand quashed and set aside. The sentence of fine / compensation shall stand as complied with.**

- **In case, the Appellant fails to deposit said amount within the stipulated period of two weeks, this**

order shall stand automatically annulled and 5th Additional Chief Judicial Magistrate, Jamnagar, is directed to issue Arrest Warrant and commit the Appellant - Accused to Jail for undergoing the sentence of imprisonment as ordered by the Hon'ble Trial Court.

➤ **Yadi, alongwith the Copy of this Judgment and Order, is to be sent to the concerned Hon'ble Magistrate Court, forthwith.**

Signed, pronounced and declared in the Permanent Lok Adalat on this 18th day of April, 2026, at Jamnagar.

Date : 18/04/2026
Place : Jamnagar

(Rasikkumar V. Mandani)
3rd Additional Sessions Judge
Jamnagar. (Code : GJ00715)

/// K. Yadav ///