

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

JAMNAGAR

Order Passed below Exh.-1

in

Criminal Appeal No. : 10/2025

APPEARANCE :-

Ld. Advocate for the Appellant	<i>Mr. P.R. Ganatra</i>
Ld. A.P.P. for the Respondent No.1/State	<i>Mr. D. A. Jivrajani</i>
Ld. Advocate for the Respondent No. 2	<i>Mr. G.A. Vaghela</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. The Respondent No. 1 is the State.
- (2). The Appellant/Original Accused has challenged the Judgment and Order dated 09/12/2024, passed by Ld. Judicial Magistrate First Class, Jam Jodhpur 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.1,41,750/- within three months and in case of

default in payment of the said amount, the Accused will have to undergo simple imprisonment of 06 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.34 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

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*

and says that he is withdrawing himself from prosecution on account of compromise and he 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,

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*

however belated, gives an incentive to the drawer of the cheque to delay settling the cases 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.

(10). 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 case of ***SANJABIJ TARI Vs. KISHORE S. BORCAR***, in the backdrop of peculiar facts of the case, the Accused is required to be imposed appropriate Cost. It is held in said above Judgment in Para-38 as follow :

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*

7 *SANJABIJ TARI Vs. KISHORE S. BORCAR*
: Cr.A 1755/10, D/- 25/9/25

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.”

- (13).** 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.1,41,750/-**, it will be just and proper to impose cost of **Rs.10,631/-** (7.5% of the cheque

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

(14). In view of the reasons stated here-in-above and considering the compromise pursis at Exh.34, the Judgment and Order dated 09/12/2024 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.10,631/- (Rupees Ten Thousand Six Hundred Thirty One 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 09/12/2024 passed in Criminal Case No. 75/2022 by the Ld. Judicial Magistrate First Class, Jam Jodhpur, 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.-34 recorded on dtd. 01/07/2026 and submitted on dtd.02/07/2026. Accordingly, the impugned order dated 09/12/2024 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 the Ld. Judicial Magistrate First Class, Jam

Jodhpur, 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 Open Court on this 11th day of July, 2026, at Jamnagar.

Date : 11/07/2026

Place: Jamnagar

(Rasikkumar V. Mandani)

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

/// K.Yadav ///