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Decided on : 16/03/2026
Duration
: Ys. Ms. Ds.

IN THE COURT OF, 3RD ADDL. SESSIONS JUDGE,
KHEDA AT, NADIAD.

EXH. _____

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**Criminal Appeal No. 39 of 2024**  
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Appellant(Ori. Accused) :

Shaileshbhai Nanjibhai Gohel,
Aged: 45 Years, Occ.: Job,
Residing at: Vadvalo Mohallo,
Post: Tundle Tal: Nadiad & Dist. Kheda.

V E R S U S

Opponents:

- 1. Proprietor of Shivam Finance,**
Ileshkumar Hasmukhbhai Solanki,
Aged: Adult, Occ.: Business,
Residing at: 33, Shriram Complex,
Rabarivad Road, Tal: Nadiad & Dist. Kheda.
- 2. State of Gujarat.**

APPEARANCES :

L. A. **Mr. C. C. Darji**, for the Appellant.

L. A. **Mr. N. N. Shah**, for the Opponent No. 1.

Ld. A.P.P. **Mr. Y. K. Barot** for State.

Criminal Appeal under Section 415 of the BNSS, 2023**JUDGEMENT**

- (1) The present criminal Appeal is filed by the appellant being aggrieved by and dissatisfied with the Judgment and Order dated 09-10-2023, passed by the Ld. Chief Judicial Magistrate, Nadiad, in Criminal Case No. 561 of 2018, whereby Ld. Trial Court was pleased to convict the Appellant for the offence U/s. 138 of the Negotiable Instruments Act and passed sentence of 1 (One) Year simple imprisonment and also ordered to pay the cheque amount and in default of the same further undergo simple imprisonment of 3(Three) months.
- (2) The appellant had filed application for suspension of the Judgment and Order passed by the Ld. Trial Court before the Appellate Court in the appeal and as per the order dated 25-01-2024 Judgement and Order of the Ld. Trial Court was suspended and Accused/Appellant was on bail out on surety of Rs.15,000/- and personal bond of like amount.

- (3) The brief facts of the parties are that the accused i.e. present appellant and complainant known to each other. That the Appellant is a businessman and there was a relation of customer and businessman between the complainant and Accused. It is further say of the complainant that Accused was in need of Rs. 30,000/-, therefore, complainant had paid Rs. 30,000/- at the rate of 18% interest. It is further say of the complainant that on 28-11-2017, Accused had issued an cheque bearing No. 000002 and the same was dishonoured, thereafter notice was issued to the accused which was not complied with. The complaint was filed and after the trial, Ld. Trial Court, Kheda was convicted appellant/accused. Hence this appeal.
- (4) During the course of this appeal, Accused was failed to appear before this Court some earlier hearing, therefore, NBW was issued against him. That the parties have compromised the dispute out of court and filed their compromise Pursis vide Exh. 39, where it has been stated that they have settle the matter out of the Court and complainant has received all the due amount. An Application for cancellation of Warrant at Exh. 37 is also supplied as well as Application vide Exh. 40 is also filed, for set aside the order of the Ld. Trial Court, wherein, as per the complainant, they have settled the debt and compromised in the appeal and the amount was given to the original complainant out of the Court and there is no

outstanding amount remaining with the accused in the light of the compromise, the appellant has prayed to allow the present Appeal and set aside the order of the Trial Court.

(5) The original complainant and his advocate as well as advocate with the appellant have remained present and as per the say of the complainant, the dispute is settled between the parties. Hence, it is prayed to pass necessary order accordingly.

(6) As regarding Sec. 147 of Negotiable Instruments Act is concerned,

it is amended provision which came into effect from 6th February 2003 and provided that notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under Negotiable Instruments Act would be compoundable. As regarding it can be said that non-obstante clause, it given overriding effect over the Code and in view of the clear mandate given to the parties, the offence U/s. 138 of Negotiable Instruments Act has been made compoundable.

Now, it is the fact that the accused has been convicted by the Trial Court and the criminal appeal is filed. As such whether compromise can be made at the appellate stage of the proceedings as it was held in the case

K. M. Ibrahim V/s. K. P. Mohmmmed and Anr., reported in 2010(2) GLR 1049, wherein it is observed in paragraph -12 “it is true that the application under Sec. 147 of the Negotiable Instruments Act was made by the parties after the proceedings and had been concluded before the Appellate Forum. However, Sec. 147 of the aforesaid Act does not bar the parties from compounding an offence under Sec. 138 even at the appellate stage of the proceedings. So, there is no reason to reject the application under under Sec. 147 of the aforesaid Act even in the proceeding under Art. 136 of the constitution.

- (7) Now perusing the citations on hand, it is the case in which the appellant was convicted by the Chief Judicial Magistrate, Kasargode and the conviction was upheld in the Appellate Court, only sentence was reduced, the said order was again challenged before the Hon'ble High Court by way of revision which was dismissed and as said appeal was filed before the Hon'ble Apex Court and parties came to compromise and so it was held there is no bar to the party from compoundable offence U/s. 138, even at the appellate stage and referring to the cases and in view held in

(1) Anil Kumar Haritwal V/s. Alka Gupta, 2004(4) SCC 366;

(2) B.C. Seshadri V/s. B. N. Suryanarayana Rao, 2004(11) SCC 510 decided by a three Judge Bence;

- (3) *G. Sivarajan V/s. Little Flower Kuries & Enterprises Ltd.*, 2004(11) SCC 400;
- (4) *Kishore Kumar V/s. J. K. Corporation Ltd.*, 2004(13) SCC 494;
- (5) *Sailesh Shyam Parsekar V/s. Baban*, 2005 (4) SCC 162;
- (6) *K. Gyansagar V/s. Ganesh Gupta*, 2005 (7) SCC 54;
- (7) *K.J.B.L. Rama Reddy V/s. Annapuna Seeds*, 2005(10) SCC 632;
- (8) *Sayeed Ishaque Menon V/s. Ansari Naseer Ahmed*, 2005(12) SCC 140;
- (9) *Vinay Devanna Nayak V/s. Ryot Sewa Sahakari Bank Ltd.*, 2008(2) SCC 305 and
- (10) *Sudheer Kumar V/s. Mankkandi M. K. Kunhiraman*, 2008 (1) KLJ 2003.

It has been observed in paragraph – 8

“The golden thread in all these decisions is that once a person is allowed to compound a case as provided for under Sec. 147 of the Negotiable Instruments Act, the conviction under Sec. 138 of the said Act should also be set aside. In the case of Vinay Devanna Nayak (2008(2) SCC 305), the issue was raised and after taking note of the provisions of Sec. 320, Cr.P.C., this Court held that since the matter had been compromised between the parties and payments had been made in full and final settlement of the dues of the Bank, the appeal

deserved to be allowed and the appellant was entitled to acquittal. Consequently, the order of the conviction and sentence recorded by all the Courts were set aside and the appellant was acquitted of the charge levelled against him.”

- (8) Now, in the light of the Judgments of the Hon'ble Apex Court and observations and principles laid down, I am of the opinion that case is compromised, complainant not before the Trial Court, but before the Appellate Court. However, in the light of the judgment pronounced by the Hon'ble Supreme Court in the case of Damodar S. Prabhu V/s. Sayed Babalal H., reported in 2010(3) GLR 2042, wherein Hon'ble Supreme Court has laid down guidelines introducing a “graded system of levying costs” on parties to encourage them to go for compounding at early state, for compounding before the Supreme court, 20% of cheque amount would have to be deposited with the Legal Services Authority. Whereas 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.

Considering guidelines issued by the Hon'ble Apex Court, I am bound by the guidelines and so though in the light of other judgments of the Hon'ble Supreme Court and Hon'ble High Courts, the appellant/accused is entitled for compound the matter at the early stage. As per the

guidelines of the Hon'ble Apex Court, compound can be allowed, if accused pays cost of 15% of the cheque amount. Here it is required to be noted that the parties to the proceedings have settled their dispute out of the Court as per their compromise pursis vide Exh. 39.

- (9) As such considering facts and circumstances of the case, as per the judgment of the Hon'ble Apex Court, in my opinion though the compromise has been filed, it is not before the Trial Court, but before the Appellate Court and in the light of the judgments of the Hon'ble Supreme Court in order that compromise may take place at the earlier stage, it has been laid down that 15% i.e. Rs. 15,000/- of amount after depositing towards the costs and so in view of the judgment's guidelines issued by the Hon'ble Supreme Court, I am of the opinion, at the appellate stage the compromise can be recorded and appeal deserves to be allowed as compromise vide Exh. 39, amount provided costs of 15% i.e. Rs. 4,500/- is paid by the accused towards costs in the District Legal Services Authority, Nadiad, and in view of the compromise between the parties vide pursis Exh. 39 and in the light of the guidelines issued by the Hon'ble Apex Court. Here, the present applicant has moved an application to adjust the amount of cost from the deposit which he paid in this Court as per the order of the interim bail application.

- (10) Looking to the above facts and circumstances, I pass the following final order in the interest of justice.

ORDER

1. The Criminal Appeal No. 39 of 2024 is hereby allowed on merits.
2. The Judgment and Order passed by the Trial Court, Kheda dated 09-10-2023, in Criminal Case No. 561 of 2018 is hereby set aside.
3. On payment of 15% of the settled amount towards costs i.e. Rs. 4,500/- in District Legal Services Authority, Nadiad and the compromise is recorded herewith accordingly.
4. The Appellant/Accused **Shaileshbhai Nanjibhai Gohel**, is hereby acquitted from the charges against him.
5. The bail bond of Appellant be cancelled.
6. Copy of this order to be sent to the DLSA, Nadiad for compliance.
7. Copy of this order along with R&P, if any, be sent to the Trial Court forthwith.

Signed and pronounced in the open Court, today on
this **16th day of March, 2026.**

Date : 16-03-2026.
Place : Nadiad.

[Prakashkumar Pratapji Purohit]
3rd Addl. Sessions Judge,
Kheda at, Nadiad.
GJ00685