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CR.AP. NO.316/2025

Received on : 02-06-2025
Registered on : 02-06-2025
Decided on : 27-03-2026
Duration : Ys. Ms. Ds.
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**IN THE COURT OF 3rd ADDL. SESSIONS JUDGE,
KHEDA AT, NADIAD.**

Criminal Appeal No. 316/2025

EXH. _____

Appellant(Ori. Accused) :

Bhatiya Kajalben Wife of Ankitbhai Dineshbhai

D/o. Atulbhai Vyas

Age : 30, Occ.: Household,

Residing at : Punit Colony, Pavanchakki Road,

Ta. Nadiad, District : Kheda.

V E R S U S

Opponents:

1. Sanjaybhai Gunvantbhai Thakar

Age : 55, Occupation : Business,

Residing at : Nadiad Panchkui,

Ta. Nadiad, District : Kheda.

2. State of Gujarat

APPEARANCES :

L.A. Mr. H.D. Solanki for the Appellant.

L.A. Ms. G.C. Patel for the Opponent No.1

Ld. PP. Mr. D.R. Barot

**Criminal Appeal U/s. 415 of Bharatiya Nyay Suraksha
Sanhita (U/s. 374 (3) of Criminal Procedure Code.)**

J U D G E M E N T

1. The present criminal appeal is filed by the present appellant being aggrieved and dissatisfied by the Judgment and order dated 03.05.2025 passed by the Ld. Addl. Chief Judicial Magistrate, Nadiad in Criminal Case No.2185/2020, whereby Ld. Addl. Chief Judicial Magistrate, Nadiad was pleased to convict the present appellant for the offence u/S. 138 of the Negotiable Instruments Act and passed sentence of 1 year simple imprisonment and order to pay the cheque amount as compensation and in default of payment further sentence of simple imprisonment for 3 (three) months.

(2) The appellant had filed application for suspension of the Judgment and order passed by the Ld. Addl. Chief Judicial Magistrate, Nadiad before the Appellate Court in the appeal and as per the order dated 02.06.2025, Judgment and Order of the Ld.

Addl. Chief Judicial Magistrate, Nadiad was suspended and the accused/appellant was on bail out on surety of Rs.15,000/- and personal bond of like amount. It was also ordered to deposit 15% of cheque amount before the Ld. Trial Court within 30 days. And the accused has not deposited 15% cheque amount till yet. And it appears from the record that many opportunities have been given to the present appellant-accused but she chose not to remain present during the appeal proceedings. Further, as the appellant was not found and did not remained present before this Court though several times initial proceedings for warrant against her as well notices against the surety were initiated by this Court. Further, as the appellant-accused was not found and did not remained present before this Court by taking advantage of her interim bail out pending this appeal.

3. At this stage, it would be profitable to refer the observations made by the Hon'ble High Court of Gujarat in the case of SNEHABEN YOGESHBHAI PANCHAL Versus STATE OF GUJARAT, order passed in R/CRIMINAL REVISION APPLICATION NO. 1203 of 2022, dated 20/12/2022, which are as under :-

2. " Not only the petitioner failed to obey the order of Appellate Court directing to deposit 20% of the cheque amount, despite extension of time repeatedly granted and

non-bailable warrant issued for fulfilling the said condition, neither she remained present before the Court nor her advocate and therefore, there was no option with the Court but to dismiss the Appeal itself. Furthermore, through the learned advocate for the petitioner, readiness and willingness was shown to deposit 20% of the cheque amount, as ordered by the Appellate Court, before the Registry of this Court on or before 13.12.2022.

3. Though, vide communication by the learned advocate for the petitioner dated 12.12.2022, a cheque bearing No.000027 dated 12.12.2022 amounting to Rs.10,80,000/- tendered by the applicant to the Registry has returned unpaid with an endorsement that funds insufficient, even this revision application can also be dismissed on the same ground as appeal is dismissed. However, it would amount to paying premium to the wrongdoer. Therefore, Page 2 of 3 Uploaded by LALJI AMRUTBHAI DESAI(HC01558) on Tue Dec 20 2022 Downloaded on : Tue Feb 04 11:20:56 IST 2025 R/CR.RA/1203/2022 ORDER DATED: 20/12/2022 Registry is directed to issue non-bailable warrant against the petitioner herein.

4. Commissioner of Police, Surat, which is her usual place of abode in that commissionerate jurisdiction, is hereby directed to see that non-bailable warrant is served upon

the petitioner herein. Commissioner of Police is further directed to file an affidavit evidencing what sincere efforts made for service of the non-bailable warrant upon the petitioner, who could not be even served with the same while Appellate Court also issued non-bailable warrant, failing which, Commissioner of Police is directed to remain present before this Court on 19th January, 2023".

4. The appellant-accused had not to remain present though many warrants have been issued earlier against her for secure her presence for further proceeding in the appeal by her. Learned Advocate for the accused was also not remained present though the name of the Ld. Advocate for the appellant was called out many times and even earlier also he did not remain present to proceed in this appeal and chose to to remain present in the appeal for further proceedings. Ld. Advocate for the appellant was present in other matters in this Court and he was warned to remain present appeal and he was assured to this Court, but failed to do so. The learned P.P. as well as Ld. Advocate for respondent No.1 declared before the Court that the accused is not present since long and even the advocate for the appellant has not remain present since long to proceed with the present appeal.

5. At this stage it would be also profitable to refer the judgment passed in the case of Ganesh Virji Rabari V/s State of

Gujarat, reported in 2009 (2) G.L.R 1513, where in it is held that :-

"Para-3. In normal circumstances, if the appellant-accused is not represented through the lawyer, the Court may proceed to examine the merits of the matter.

However, such situation may arise if the presence of the accused is secured, may be by releasing him on bail or he may be in the custody. Neither situation exist in the present case. The learned A.P.P. drew the attention of this Court to the decision of the Division Bench of this Court in the case of Mahendra Bhogilal Tadvī v. State of Gujarat, reported at 2009 (1) GLR 91 and he submitted that this Court based on the aforesaid decision may dismiss the matter on the ground that the convict is not present since long as absconder. It was therefore, submitted that similar order may be passed by this Court as was passed by this Court in the case of Mahendra Bhogilal Tadvī (supra).

6. Looking to the tendency of the present appellant to flee away and that the appellant has no faith in justice delivery system, after filing appeal, deliberately he has ignored the entire system and also the advocate is remained absent since long.

7. Today, I have gone through the entire record of this appeal. I have also heard the Ld. Advocate of the respondent-original

complainant and also heard the Ld. P.P. for the State. The Ld. Advocate for the respondent-original complainant has made his advance argument that the Trial Court has fairly passed order in the Criminal Case after *fullfledge* trial. The payment of compensation was not made to the respondent, though, in the Criminal Case the Trial Court has passed an order of compensation under Section 357(3) of the Cr.P.C. In the present appeal, the appellant failed to do the same. The original Criminal Case was around 06 years old as of Year-2020 and trial Court has framed issue properly and after giving full opportunity to the parties and lastly passed a final order and in the said judgment the Ld. Judge has discussed the all law points as well as judgments of the Hon'ble Apex Court as well as of Hon'ble High Courts all finally passed an order of conviction. Now from the said facts as well as going through the judgment of the Trial Court this Court of the view that even the merit of this Appeal is apparently poor as the appellant herself failed to establish that the original order of the Trial Court illegal, perverse. The appellant cannot watch the proceedings by remaining underground. Even though if she is acquitted, it will encourage such absconding-accused and if there is conviction, then, she will continue to remain absconding so as to avoid the conviction. In both these situation, the hearing of this Criminal Appeal will encourage those, who are in jail to flee away or jump the bail or

furlough leave. I do not want to encourage absconding-accused by taking such type of Criminal Appeal pending for final hearing on merits and I reiterate that when any accused disrespects the Constitution of India or justice delivery system, and also thereby, disobeys fundamental duty vested in him, as per sub-Art. (a) of Art. 51A of the Constitution of India, her Criminal Appeal deserves to be dismissed on this ground as well as its merits as discussed earlier. Therefore, in the interest of justice I pass following order as under.

-:: O R D E R ::-

1. Criminal Appeal No.316/2025 is hereby dismissed.
2. This appeal of the appellant on the ground of fault of the appellant/original accused is hereby ordered to be dismissed and the order of the Ld. Trial Court is hereby confirmed.
3. The Bail Bond is hereby cancelled in this appeal.
4. For execution of sentence in Criminal Case No.2185/2020, send a copy of this order to the trial Court.
5. Looking to the facts and circumstances of this case, Rs.10,000/- is ordered as to costs. Cost amount be disposed in District Legal Services Authority, Nadiad
6. The amount deposited if any be forfeited accordingly. The said facts be intimated to the Nazir, District Court, Naidad

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for further compliance.

Signed and pronounced in the open Court.

Date : 27-03-2026.

Place: Nadiad.

[Prakashkumar Pratapji Purohit]

3rd Addl. Sessions Judge,

Kheda at Nadiad.

GJ00685