

ORDER BELOW EXH.16

1. The present Criminal Appeal is preferred by the appellant/original accused against the respondent/original complainant and the State under Section 415 of the B.N.S.S. against the judgment and order passed by the Chief Judicial Magistrate, Surendranagar on 01/04/2025 in Criminal Case No. 1467/2017 filed under Section 138 of the Negotiable Instruments Act. The parties are hereinafter referred to as "the accused" and "the complainant" as they stood in the original case for the sake of convenience, clarity and brevity.

2. The facts giving rise to the present appeal are as under :

That, the complainant had filed a complaint under Section 138 of the Negotiable Instruments Act against the accused on 10/10/2017. The accused was served with the summons of the case and he appeared before the learned trial court through his advocate. The plea of the accused came to be recorded at Exh.22, wherein the accused did not plead guilty and claimed to be tried and therefore, the evidence of the complainant came to be recorded. Thereafter, the complainant closed his evidence by filing a closing pursis and the further statement of the accused under Section 313 of the Code of Criminal Procedure came to be recorded. After hearing the arguments advanced by the learned advocates for both the parties and after appreciating the evidence on record, the learned Chief Judicial Magistrate, Surendranagar was pleased to convict the accused under Section 255(2) of the Code of Criminal Procedure and sentenced him to undergo one

year simple imprisonment and further directed that the cheque amount, which had been deposited by the accused before the Court, be paid to the original complainant towards compensation.

3. Being aggrieved and dissatisfied by the judgment and order, the accused has filed the present appeal on various grounds and requested to quash and set aside the order passed by the learned trial court by allowing this appeal.

4. I have perused the record and proceedings and have heard learned advocate Mr.S.A.Adhiya for the appellant/accused, learned advocate Mr.N.B.Lakhtariya for the respondent No.1/original complainant and Ld.P.P. Mr.R.B.Raol for the respondent No.2.

5. During the pendency of this appeal, the respondent No.1/original complainant has submitted his pursis at Exh.14 stating that he does not wish to compromise the matter with the accused. On the other hand, the appellant/original accused has filed an admission pursis at Exh.15 and has pleaded guilty to the offence in question. The appellant/accused has further declared that he had already deposited the cheque amount of Rs.5,00,000/- before the learned trial court prior to the closure of the evidence of the complainant. The appellant/accused has also contended that he is a businessman and does not want to involve himself in any further dispute and has expressed regret for the dishonour of the cheque issued by him to the complainant.

6. Moreover, the present appellant/original accused has also submitted an application at Exh.16 seeking to release him on probation in view of the decision of the Hon'ble Apex Court in **Criminal Appeal No.1755/2010** in the case of **Sanjabij Tari v. Kishor S. Borcar & Anr.** It is contended that the appellant/accused has already deposited the cheque amount before the learned trial court prior to the closure of the evidence of the complainant and has expressed his readiness and willingness to deposit 7.5% of the cheque amount with the District Legal Services Authority in accordance with the guidelines laid down by the Hon'ble Apex Court.

7. I have given my thoughtful consideration to the arguments advanced by the learned advocates for the respective parties. I have also gone through the evidence available on record and have perused the judgment and order passed by the learned trial court. I have further considered the decision of the Hon'ble Apex Court in **Sanjabij Tari v. Kishor S. Borcar & Anr.**, the directions of which have been circulated by the Hon'ble High Court of Gujarat vide **Circular No. D.2913/2026 dated 05/02/2026** for due compliance.

8. On perusal of the judgment and order passed by the learned trial court, it appears that the complainant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1981 against the accused on 10/10/2017. Upon conclusion of the trial, the learned Chief Judicial Magistrate, Surendranagar was pleased to convict the accused under Section 255(2) of the Code of Criminal Procedure, 1973 and sentenced him to undergo one

year simple imprisonment and further directed that the cheque amount, which had been deposited by the accused before the Court, be paid to the original complainant.

9. Moreover, in the present appeal filed by the appellant/original accused being aggrieved and dissatisfied with the judgment and order passed by the learned trial court, the accused has pleaded guilty to the offence in question by filing his pursis at Exh.15 and has stated that he had already deposited the cheque amount of Rs.5,00,000/- before the learned trial court prior to the closure of the evidence of the complainant. The said fact is not disputed by the respondent No.1/original complainant. However, the respondent No.1/original complainant has expressed his unwillingness to compromise the matter with the accused.

10. Furthermore, on perusal of the record, it transpires that the present appellant/original accused has also submitted an application at Exh.16 seeking to release him on probation in view of the decision of the Hon'ble Apex Court in **Sanjabij Tari v. Kishor S. Borcar & Anr.** and has stated that he is ready and willing to deposit 7.5% of the cheque amount with the District Legal Services Authority in accordance with the guidelines laid down therein.

11. On perusal of the decision of the Hon'ble Apex Court in **Criminal Appeal No.1755/2010** in the case of **Sanjabij Tari Vs. Kishor S. Borcar & Anr.** wherein in **para-38 and para-39**, the Hon'ble Apex Court has held as under ;

“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. ”

12. The directions issued by the Hon’ble Apex Court in the aforesaid decision have been circulated by the Hon’ble High Court of Gujarat vide **Circular No. D.2913/2026 dated 05/02/2026** for scrupulous compliance. Therefore, considering the aforesaid decision of the Hon’ble Apex Court and the facts of the present case, it appears that the appellant/original accused has pleaded guilty to the offence in question by filing his admission

pursis at Exh.15 and has declared that he had already deposited the cheque amount of Rs.5,00,000/- before the learned trial court prior to the closure of the evidence of the complainant. The appellant/original accused has also submitted the present application at Exh.16 seeking to release him on probation in view of the decision of the Hon'ble Apex Court in **Sanjabij Tari v. Kishor S. Borcar & Anr.** and has shown his willingness to deposit the requisite amount before the District Legal Services Authority.

13. Thus, considering the aforesaid facts and circumstances of the present case, though the respondent No.1/original complainant has expressed unwillingness to compromise the matter, the Hon'ble Apex Court in the decision of **Sanjabij Tari v. Kishor S. Borcar & Anr.** has held that if the accused is ready and willing to pay the cheque amount and has complied with the payment thereof, the Court may exercise powers under Section 255(2) or Section 255(3) of the Code of Criminal Procedure or Section 278 of the B.N.S.S., 2023 and may also extend the benefit under the Probation of Offenders Act, 1958 to the accused.

14. In the present case, the appellant/original accused is a businessman and there is nothing on record to show that he is a habitual offender. The cheque amount has already been deposited before the learned trial court and the appellant/original accused has shown his willingness to deposit requisite amount before the District Legal Services Authority as per the guidelines laid down by the Hon'ble Apex Court and looking to the record, it

transpires that since, the appellant/ accused had deposited the cheque amount i.e. Rs.5,00,000/- at the stage of evidence of the complainant before the learned trial court, as per direction issued by the Hon'ble Apex Court in the aforesaid decision, the appellant/ accused is required to deposit additional 5% of the cheque amount i.e.Rs.25,000/- for compounding of the offence with the District Legal Services Authority, Surendranagar.

15. Considering the nature of the offence, the conduct of the appellant/original accused, the fact that the cheque amount has already been deposited by the accused in connection with the complaint filed u/s. 138 of the Negotiable Instruments Act, 1881, this Court is of the opinion that instead of sending the appellant/original accused to imprisonment, the appellant/original accused is entitled to the benefit of probation in view of the aforesaid decision of the Hon'ble Apex Court.

16. Hence, the appellant/accused is ordered to be released on probation of good conduct for a period of one year u/s 4 of Probation of Offenders Act. subject to depositing 5% of the cheque amount i.e.Rs.25,000/- with the District Legal Services Authority, Surendranagar. Therefore, the following order is passed:-

::: O R D E R :::

- (i) The present application Exh.16 is hereby granted.
- (ii) Criminal Appeal No.78/2025 is hereby partly allowed.

- (iii) The judgment and order dated 01/04/2025 passed by the Chief Judicial Magistrate, Surendranagar in Criminal Case No. 1467/2017 to the extent of conviction is hereby confirmed. However, the sentence of imprisonment imposed upon the appellant/original accused stands modified, subject to depositing 5% of the cheque amount i.e.Rs.25,000/- (Rs.Twenty Five Thousand Only) within 30 days from today by the appellant/accused with the District Legal Services Authority, Surendranagar.
- (iv) The appellant/accused is hereby ordered to be released on probation of good conduct u/s 4 of Probation of Offenders Act, on execution of a personal bond of Rs.5,000/- (Rupees Five Thousand Only), with one surety in like amount for a period of 01 (one) year to appear and receive sentence as inflicted by the Ld. Trial Court as and when called upon.
- (v) The above stated bond and surety u/s 4 of the Probation of Offenders Act, shall be furnished before the concerned Ld. Trial Court within 07 days from today by the appellant/accused.
- (vi) It is hereby further directed that the appellant/accused shall maintain peace during the above mentioned period of 01 (one) year.
- (vii) If the respondent No.1/ original complainant does not want to file an appeal before the Hon'ble High Court Gujarat, then he shall be at liberty to withdraw the amount of Rs.5,00,000/- deposited by the present appellant/ original accused before the learned trial court.

(viii) R & P be sent back to the concerned Court with a copy of this judgment.

Pronounced in the open court to-day on this **24th** **day of**
March, 2026.

Date :24/03/2026

Place: Surendranagar.

(KAILASNATH R. UPADHYAY)

Sessions Judge,

Surendranagar.

(GJ00333)