

FILED ON	:	02/08/2025		
REGISTERED ON	:	02/08/2025		
DECIDED ON	:	06/03/2026		
DURATION	:	YY	MM	DD
		00	07	04
Exhibit				

IN THE COURT OF 3rd ADDITIONAL SESSIONS

JUDGE SURAT AT BARDOLI

Criminal Revision Application No.101/ 2025

Applicant:

Rashmina Hirenkumar Patel,
R/o.16, Vrundavan Banglow,
Thaltej Silaj Road,
Thaltej, Ahmedabad.

VERSUS

Opponent:

(1) **Nimeshbhai Harishbhai Shah,**
Partner of M/s. Dahyabhai Jamnadas -
Partnership Firm,
Add. Market Yard, Zankhvan road,
Mandvi, District Surat.

(2) **The State of Gujarat**

Appearance:

Mr. P.N. Patel : Learned Advocate for applicant.

Mr. A.P. Parmar: Learned Advocate for opponent no.1

Mr. N.H. Patel : Learned Advocate for opponent no.2

JUDGMENT

1. The present Criminal Revision Application has been preferred by the Revisionist/accused challenging the order below Exh.1 of Criminal case No.510/2025 dated 06/05/2025 passed by

Ld. Additional Chief Judicial Magistrate, Mandvi in complaint under sections 138 of Negotiable Instrument Act (NI Act for short).

2. In brief the crux of the present revision petition is that the opponent filed Criminal case No.510/2025 before the ld. trial court under sections 138 of NI Act wherein the ld. trial court was pleased to pass summoning order against the present applicant on dated 06/05/2025. Therefore the present revision application preferred by the Revisionist.

3. Ld. advocate for the revisionist is challenging the summoning order dated 06/05/2025 passed by Ld. Additional Chief Judicial Magistrate, Mandvi on the grounds that the present applicant is arraigned as accused no.2 in Criminal case No.510/2025 and is wife of the accused no.1. She is neither the signatory of the cheque nor is carrying on the day to day affairs of the partnership firm. She is only a sleeping partner. It is further alleged that she has been impleaded as accused only to put pressure upon applicant no.1 her husband. It is further submitted that complainant seeks to fasten the vicarious liability upon both the partners of partnership firm despite of the fact that cheque in question was exclusively signed by the husband. It is further submitted that u/s.138 read with 141 of NI Act, the criminal liability of a partner is not automatic or presumed solely by virtue of a designation and mandates specific averments and prima facie material, demonstrating that the person sought to be sommoned was incharge of and responsible for the conduct of the business of the firm. In absence of any categorical assertion supported by factual particular summoning order of a partner particularly who

neither signed the cheque nor participated in the transaction amounts to mechanical exercise of jurisdiction and mere status as a partner is not sufficient to attract criminal prosecution. Hence, prayed that the impugned summoning order in so far as pertains to summoning of applicant i.e. wife is liable to be set aside. He has produced judgements as under :

- (1) 2013 (3) CCC 0712, Mrs. Aparna A. Shah V. M/s. Sheth Developers Pvt. Ltd.;
- (2) 2017 (0) AIJEL-HC 238327, Harshad Manubhai Malavaiya V. State of Gujarat;
- (3) 2023 (0) AIJEL-HC 246043, Amol Chandrakant Pawar V. State of Gujarat;
- (4) 2007 (0) AIJEL-SC 38985, N.K.Wahi V. Shekhar Singh
- (5) 2003(0) (0) AIJEL-TN 1201272, Leela Rathnam vs. Vikas Electo Chem Agencies Pvt.Ltd;
- (6) 2006(0) AIJEL-DL 1329318, J.N Bhatia vs. State;
- (7) 2007(0) AIJEL-DL 1336112, Harmeet Singh Paintal vs. State (Govt of Nct of Delhi)
- (8) 2024(0) AIJEL-SC 73394, Susela Padmavathy Amma vs. M/s. Bharti Airtel Limited;
- (9) 2023(0)AIJEL-SC 72596, Siby Thomas vs. Somany Ceramics Ltd.;
- (10) 2023(0) AIJEL-SC 72190, Ashok Shewakramani vs. State of Andhra Pradesh.

4. Notice was duly served to the opponents. Ld. Advocate for opponent no.1 appeared and filed objections vide Exh.7 alleging that the applicant is the partner of the firm alongwith her husband and she is equally liable as there is a

partnership and since she is a partner, signature on the impugned cheque are immaterial. It is further submitted that the firm in question is an admitted partnership concern in which both the husband and wife are partnership, therefore, the business transaction carried out in the name of firm binds each of them. Further, the revisionist herself has acknowledged the existence of the partnership and her liability in proceedings arising out of her bankruptcy petition and such admission precludes her from resiling in present proceedings. It is further submitted the mere fact that cheque bears the signature husband alone is not determinative and the revisionist being a partner of the firm can not evade prosecution solely on the plea that she was not the signatory to instrument. Ld. advocate for the opponent no.1 strongly resisted the present revision application on the ground that the order passed by the ld. Magistrate is legal and does not suffer from any infirmity, hence, prayed to reject the present revision application. He has produced judgements as under :

- (1) 2010 (0) AIJEL-SC 47983, National Small Industries Corporation Limited vs. Harmeet Singh Paintal;
- (2) 2014 (0) AIJEL-SC 55840, Ranjana Desai vs. N.V. Ramana;
- (3) 2012 (0) AIJEL-SC 51148, Anil Hada vs. Godfather travels & Tours Limited;
- (4) 2009 (0) AIJEL-SC 44115, K.K. Ahuja V. V.K. Vora;
- (5) 2004(0) AIJEL-SC 18124, Monaben Ketanbhai Shah vs. State of Gujarat;
- (6) 2007(0) AIJEL- SC 39075, N. Rangachari vs. Bharat Sanchar Nigam Limited;
- (7) 2012 Supreme (Del) 2188, Rajeev Bakshi vs. State of NCT;

- (8) 2019 (0) AIJEL-SC 63961, A.R. Radha Krishna vs. Dasari Deepthi;
- (9) 2017 (0) AIJEL-SC 60827, Innoventive Industries Ltd. vs. ICICI Bank;
- (10) 2021 (0) AIJEL-SC 67059, P.Mohanraj & others vs. Shah Brothers Private Limited;
- (11) 2009 AIIMR (Cri) 1080, Sanjay Mishra vs. Kanishka Kapoor @ Nikki;
- (12) 1960 (0) AIJEL-SC 22092, R.P. Kapur vs. State of Punjab;
- (13) 1999 (0) AIJEL-SC 24161, Rejesh Bajaj vs. State Govt of Nct of Delhi;
- (14) 1995 (0) AIJEL-SC 29748, State of Tamil Nadu vs. Thirukkural Perumal.

5. Upon hearing the learned advocate for the applicant - revisionist and upon going through all the documents produced on record, the following points are required to determine by me.

POINTS

(1) Whether the order passed below application Exh.1 on 06/05/2025 in Criminal case No.510/2025 by learned Additional Chief Judicial Magistrate, Mandvi is illegal, incorrect and erroneous and hence the same is, required to be interfered with and set aside ?

(2) What order ?

My findings of above points are as under :

(1) In negative.

(2) As per final order.

REASONS

6. Heard both the parties and R & P was called for and

perused the record. Perusal of the revision application reveals that the revisionist filed Criminal case No.510/2025 under section 138 of NI Act before the ld. trial court. The ld. Magistrate vide his order dated 06/05/2025 issued summoning order against the revisionist. The sole dispute before this court is whether the impugned summoning order can be sustained in law. The revisionist is challenging the summoning order on the grounds of non-signature, lack of responsibility for business, sleeping partner and mis-joinder solely to pressurize her husband.

7. Before entering into merits of the present revision application it is worthwhile to discuss the scope of revisioner power of this court. Section 397 of the CrPC grants the Sessions Court the power of revision, allowing it to examine the legality or propriety of any order passed by the Subordinate Court. However, the scope of revisional jurisdiction is limited. The Court may only exercise the revisional powers when it finds that the order passed by the lower court is illegal, improper or unjust.

8. In **Chhotelal Vs. State of Uttar Pradesh, 2007 (59) ACC 25 Allahabad**, the Hon'ble Court has emphasized the importance of exercising revisional jurisdiction cautiously and sparingly. It further held that revision should not be sought merely as substitute for an appeal. The Hon'ble Court reiterated that revisional jurisdiction should be invoked only when there is a patent error of law or jurisdiction or miscarriage of justice. Similar view has been taken by the Hon'ble Apex Court in **Samardha Sreepada Vallabha Vishwadha Maharaj Vs. State of Andhra Pradesh, JT 1999 (4) SC 537**, wherein the Hon'ble Apex Court has held that, discretion exercise by the Magistrate in such

matters should be respected and revisional court should not interfere lightly with such discretionary orders. Unless there is a clear error of law or procedure.

9. From the above discussion, it is clear that the power of revisional court under section 397 read with 401 Cr.P.C., is supervisory and does not allow re-weighing or re-evaluation of evidence at prima facie stage. Interference with the summoning order is permissible only where there is patent illegality, non-application of judicial mind or lack of jurisdiction.

10. Section 138 of NI Act creates a penal offence where a cheque is dishonoured for insufficient funds or account closer, subject to fulfillment of condition including drawing of cheque, dishonoured, statutory notice and failure to make payment within 15 days of notice. Section 141 of NI Act extends criminal liability to others beyond signatory "every person who at the time of offence was committed, was incharge of and responsible to the company/firm for the conduct of its business". The explanation includes company, firm. Thus, in cheque bounce cases involving firms, there are two limbs of liability i.e. direct liability of the signatory and vicarious liability of partner, if they were incharge of and responsible for the conduct of the business. Where a cheque is drawn on the firm's account and signed by one partner, the act is legally attributed the all partners and both can be held jointly and severally liable for dishonoured of a cheque. Even sleeping partner cannot escape section 138 liability by mere non-participation, if liability is pleaded and partnership is admitted. At the same time, section 141 of NI Act is not automatic by virtue of civil liability alone.

11. A sleeping partner is one who contributes capital and shares profits but does not participated in daily management. However, where the complainant specifically pleads partnership and responsibility, the status of partner as active or sleeping becomes a question of evidence at trial. Signature on the cheque is relevant for direct liability and the signatory is prima facie drawer under section 138 of NI Act. Non-signature does not automatically absolved a partner where the complainant pleads partnership and joint liability. The Hon'ble Supreme Court Dhanasingh Prabhu vs Chandrasekar on 14 July, 2025 held that liability of partners for acts committed in the name of the firm is joint and several as between themselves vis-a-vis third parties irrespective of signatures. Section 118 and 139 of NI Act creates statutory presumption in favour of the complainant that the cheque was drawn for consideration and in discharge of legally enforceable debt. At summoning stage this presumptions operate in favour of prima facie satisfaction and rebuttal is a trial stage issue.

12. It is pertinent to mention that in reply notice the revisionist and her husband did not make any averment as to the revisionist being a sleeping partner nor there is single whisper in the entire reply notice as to lack of responsibility for business by the revisionist. Further, the reply notice is given on behalf of both husband and wife alleging partners of Panshul Agro Food LLP. Admittedly there exist partnership between husband and wife, the cheque was issued in discharge of liability of the firm, the cheque was dishonoured, both the partners were responsible for the business of the firm. The averment meet the test for prima facie

satisfaction. The procedural requirements the cheque dishonour memo, the statutory notice and the affidavit are on record. The defence of sleeping partner and non-signature goes to the merit of the case and is a question of evidence, not a ground to quash at summon stage.

13. At the summoning stage, the court only needs to satisfy itself that a prima facie case exist against the partner based on the allegation in the complaint. While a deep, in-depth inquiry is not required. The correct approach is to examine whether the narrative, taken at the face value satisfies the basic ingredients of alleged offences and not to weigh whether evidence will ultimately sustain conviction.

14. So far, the judgments relied upon by the Learned Advocate for the revisionist there is no dispute as to the ratio of law laid down in those judgments, but in the considered opinion of this Court same are distinguishable on facts and circumstances. Hon'ble Supreme Court in **Padmausund Rao and another v. State of Tamil Nadu and others, 2002 (3) SCC 533**, had observed that,

“it is the settled proposition of law that peculiar facts of each case are to be examined, considered and appreciated first before applying any codified or judge made law thereto. Some times, difference of one additional fact or circumstance can make the world of difference.”

15. Therefore, after going through consideration of the submissions made by the parties and perusal of the relevant legal precedents, this Court finds that the revision application is not maintainable. The order of the Magistrate does not appear to

suffer from manifest error of law or procedure. Considering the fact and circumstances, I answer point No.1 in negative and for point no.2, I pass following order:

:: O R D E R ::

- 1) The present Criminal Revision Application is hereby dismissed being devoid of any merit.
- 2) The order below Exh.1 dated 06/05/2025 in Criminal Case No.510/2025 passed by learned Additional Chief Judicial Magistrate, Mandvi is hereby confirmed.
- 3) R & P, if any, be sent back to the concerned Court with a copy of this judgment.

Pronounced in open court today on this 6th day of March, 2026.

Date : 06/03/2026
Place: Bardoli.

(Preet Kamal Tirath Ram)
3rd Additional District Judge,
Surat at Bardoli.
UID. No.GJ 01594