

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION NO. 73 of 2020**

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ASHOKBHAI KANJIBHAI SHAH

Versus

STATE OF GUJARAT

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Appearance:

MR HIREN P VYAS(2269) for the Applicant(s) No. 1

MS SEJAL H VYAS(3211) for the Applicant(s) No. 1
for the Respondent(s) No. 2

MS MH BHATT, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE B.N. KARIA

Date : 06/02/2020

ORAL ORDER

The applicant has challenged the judgment and order dated 24.01.2017 passed by the learned Additional Chief Judicial Magistrate, Gandevi in Criminal Case No. 163 of 2012 as well as judgment and order dated 21.12.2019 passed by learned 2nd Additional Sessions Judge, Navsari in Criminal Appeal No. 7 of 2017.

Heard learned advocate for the applicant.

It was submitted by learned advocate for the applicant that trial Court as well as appellate Court have committed grave error of law apparent on the face of the record by not

appreciating that disputed cheque was never issued to the complainant towards discharge any existing debt, and therefore, the provisions of Section 138 of the Negotiable Instruments Act are not attracted. It was further submitted that this cheque was never issued to the original complainant and said lost cheque has been falsely utilized by the complainant. That, there was no relation with the complainant of giving any amount to the present applicant or to issue any cheque by the applicant to the complainant. That, initial burden of proving the existing debt has not been discharged by the complainant. That, legal debt was not at all proved by producing any cogent evidence on record. However, out of the cheque amount of Rs. 3,00,000/-, the applicant has deposited Rs. 1,50,000/- and learned Trial Court has extended the suspension of sentence up to 7th February 2020.

Issue requires consideration.

Rule returnable on 5th March 2020. Learned APP waives service of notice of rule for and on behalf of the respondent-State.

Interim relief sought for in para 10(b) stands granted. The judgment and order dated 24.01.2017 passed by the

learned Additional Chief Judicial Magistrate, Gandevi in Criminal Case No. 163 of 2012 as well as judgment and order dated 21.12.2019 passed by learned 2nd Additional Sessions Judge, Navsari in Criminal Appeal No. 7 of 2017 stand stayed till the next date of hearing.

Direct service is permitted.

K. S. DARJI

(B.N. KARIA, J)