

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 298 of 2019

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ISHWARBHAI KUBERBHAI PATEL
 Versus
 STATE OF GUJARAT & ANR.

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Appearance:

MR PUNDREEK B ODEDRA for MR MAHESH K POOJARA(5879) for the
 Appellant(s) No. 1

MR. KISHAN H DAIYA(6929) for the Appellant(s) No. 1

MR DARSHAN DAVE for the Opponent(s)/Respondent(s) No. 2

MR YUVRAJ BRAHMBHATT, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE SANJEEV J. THAKER

Date : 06/04/2026

ORAL ORDER

1. This is an acquittal appeal filed under Section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code' for short) / under Section 419 of the Bharatiya Nagrik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS' for short) by the complainant against the judgment and order impugned passed by the learned trial Court, whereby the learned trial Court had acquitted the respondent/s/accused of the charge under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act' for short).

2. Heard learned advocate for the parties. Learned APP has submitted that this matter is required to be

transferred in view of the recent decision of this Court passed in Criminal Misc. Application No.12753 of 2019 with Criminal Misc. Application No.12908 of 2019.

3. Before entering into the merits of this case, this Court deems it proper to refer to the latest decision rendered by this Court in the case of *Shivsinh Ganpatsinh Solanki V/s State of Gujarat & Anr.* being *Criminal Miscellaneous Application Nos. 12753 of 2019 with 12908 of 2019* on 23.12.2025, wherein, after considering the various judgments of the Hon'ble Supreme Court, more particularly, the judgment in the matter of *M/s Celestium Financial V/s A.Gyanasekaran etc. reported in 2025 INSC 804*, has observed and held that the Complainant, in a complaint under Section 138 of the N.I. Act, being a Victim, has a specific right to appeal under proviso of Section 372 of the Code / Section 413 of the BNSS to the Court which is immediately superior in hierarchy i.e., the Sessions Court. Therefore, the applications for leave to appeal/appeal(s) which are pending before this Court can be disposed of with a direction to transfer the said application/appeal(s) to the concerned Sessions Court.

4. In view of the above, learned advocate for the petitioner requested to transfer the appeal to the concerned

Sessions Court.

5. In view of the said request, this appeal is disposed of with a direction to the Registry to transfer the appeal to the concerned Sessions Court. After it is transferred to the concerned Sessions Court, it has to be treated as an Appeal under the proviso under Section 372 of the Code / Section 413 of BNSS and numbered accordingly and issue notice to the parties. The Registry is directed to transfer the entire record of the case, including the certified copies of the order impugned and record & proceedings, if lying with this Court, to the concerned lower Appellate Court, forthwith.

6. Considering that the matter has been pending for considerable time, the learned lower Appellate Court is required to make endeavour to dispose of the matter as expeditiously as possible. It is clarified that this Court has not gone into the merits of the matter at this stage.

7. Learned advocate Mr.Darshan Dave submits that he has instructions to appear for respondent No.2 and he will file vakalatnama. The Registry to accept the same.

(SANJEEV J.THAKER,J)

M.H. DAVE/100