

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 6850 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL

Sd./-

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Approved for Reporting	Yes	No
	-	✓
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JAY JAGANATH AIR EQUIPMENTS PROPRIETOR FIRM THRO TEJAL
 BRIJESH KUMAR PATHAK
 Versus
 STATE OF GUJARAT & ANR.

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Appearance:

MR NIRAV C SANGHAVI(5950) for the Applicant(s) No. 1
 MR DAX K SOLANKI(12696) for the Respondent(s) No. 2
 PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE P. M. RAVAL

Date : 28/07/2026

ORAL JUDGMENT

1. Leave to amend is granted. To be carried out, forthwith.

2. The applicant before this Court has invoked the provisions of Section 482 of the Code of Criminal Procedure, seeking quashing and setting aside of Criminal Case No. 33341 of 2019, pending before the Court of the learned in-charge Additional Chief Judicial Magistrate, Vadodara, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('NI Act', in brief), lodged by the

original complainant – Respondent No.2 herein, so also the process of issuing summons below Exhibit-1 in the said criminal case vide order dated 25.10.2019.

3. Learned advocate, Mr. Sanghavi, appearing for the applicant would submit that, as per the averments made in the impugned complaint, the complainant had placed an order for purchase of HVAC system on 31.12.2018, which was not executed within stipulated time and therefore, an intimation was given for terminating the said purchase order vide letter dated 01.04.2019.

3.1 It is, further, stated in the said complaint that the purchase order was revised, subject to certain conditions, later on. The accused had also addressed an e-mail dated 02.04.2019 to the complainant. Since, the terms of the revised order were not fulfilled, the purchase order came to be canceled, again. Then, the accused raised performa invoice, demanding further amount and it is the case of the complainant that, at that time, original accused No.2 – Brijeshbhai Ashvinbhai Pathak, who claimed to be the CEO of Jay Jaganath Air Equipments and the husband of the present applicant, assured the complainant to complete the entire work by 10.06.2019 and for which, he issued two cheques for Rs.70,00,000/- and Rs.40,00,000/- drawn on Union Bank of India, Nizampura Branch, Vadodara.

3.2 When the complainant presented the aforesaid cheques for payment, the same were returned with the endorsement "Payment stopped by the drawer" and the complainant came to know about the same on 09.09.2019. Therefore, the complainant issued legal notice, under the provisions of the NI Act, on 18.09.2019 and despite due service thereof, when the accused failed to pay the amount, the complainant lodged the present complaint. Pursuant to the same, the learned in-charge Additional Chief Judicial Magistrate, Vadodara, issued summons under Section 204 of the Code, making the same returnable on 22.11.2019.

Hence, the present application.

4. At the outset, learned advocate, Mr. Sanghavi, appearing for the applicant submitted that the husband of the present applicant, namely Brijesh Ashvinbhai Pathak, had also preferred Criminal Misc. Application No. 8635 of 2022, which was permitted to be withdrawn by the Coordinate Bench of this Court, vide order dated 10.06.2026, with a liberty to take all permissible defences available to the present applicant before the concerned trial Court.

4.1 Learned advocate, Mr. Sanghavi, appearing for the applicant would submit that from a bare perusal of the complaint, it would appear that the disputed cheques were

issued by the husband of the present applicant-accused No.2, namely Brijeshbhai, from his savings account and not from the account maintained by the Jay Jaganath Air Equipments, wherein, the present applicant is a proprietor.

4.2 Learned Advocate, Mr. Sanghavi, would further submit that the said cheques were neither signed by the present applicant nor the same were issued from the bank account maintained by her nor the said two cheques were issued in here capacity as a partner of the company. Under the circumstances, the complaint against the present applicant is not maintainable.

4.3 Learned Advocate, Mr. Sanghavi, would further submit that the impugned complaint does not contain the necessary ingredients of commission of the offence under Sections 138 of the NI Act and there is also dispute with regard to the amount actually to be paid and therefore, the complaint against the present applicant is lodged without disclosing necessary facts.

4.4 Learned advocate, Mr. Sanghavi, also drew attention of this Court to the letter dated 29.08.2019, addressed by the complainant to the present applicant, to point out that an amount of Rs.79,11,340/- is paid in excess and despite that, the disputed cheques for an amount of more than Rs.1,00,00,000/- were deposited by the complainant and by

suppressing the material facts, the impugned complaint is lodged by the complainant.

5. *Per contra*, learned Advocate, Mr. Dax Solanki, appearing for Respondent No.2-the original complainant would submit that Jay Jaganath Air Equipments is a proprietary firm and present applicant, namely Tejal Brijesh Kumar Pathak, is the sole proprietor and original accused No.2-Brijesh Ashvinbhai Pathak happen to be the husband of the present applicant and they handle the business, together. It was, further, submitted that since the husband of the present applicant, namely Brijesh Ashvinbhai Pathak, introduced himself as the CEO of Jay Jaganath Air Equipments all the communications were addressed to him. It was submitted that as per the commercial terms of the order placed by the original complainant, 25% amount was to be paid in advance, 65% per amount to be paid against Performa Invoice prior to dispatch and remaining 10% were to be paid after installation. It was further argued that the complainant had availed financial assistance from the bank on strict terms, regarding completion of project and they are paying higher rate of interest and despite the fact that original accused No.2, i.e. husband of the present applicant, had agreed to execute the purchase order within time, there was in-ordinate delay and the project was being executed at a very slow pace. It was submitted that the applicant was not having requisite material to execute the project and she

and her husband were not even offering satisfactory reply with regard to the completion of the project, despite of several oral requests as well as written communications. Thus, the complainant issued notice dated 01.04.2019 to original accused No.2, i.e. the husband of the present applicant, who had posed himself as CEO of Jay Jaganath Air Equipments, and asked him to refund the amount, failing which the complainant shall initiate legal proceedings for recovery and the purchase order was also canceled by the said letter.

5.1 Learned advocate, Mr. Solanki, submitted that after receiving the said notice, original accused No.2 and husband of the present applicant had contacted the complainant and a personal meeting was also arranged and during the said meeting, the present applicant and her husband-accused No.2 had agreed to complete the work by 20.05.2019 and had also made a request to withdraw the aforesaid notice. Therefore, the complainant agreed to reconsider its decision and was ready to make payments proportionate to the installed HVAC system. However, the applicant addressed the e-mail dated 02.04.2019 with a view to extort more money from the complainant, without installing HVAC system, which did not inspire confidence. Thereafter, the applicant herein raised Performa Invoice No.2 and demanded Rs.75,65,566/-, which justified the apprehension of the complainant and therefore, the

complainant again terminated the purchase order.

5.2 It was, further, argued that accused No.2 and CEO of Jay Jaganath Air Equipments had a personal meeting with the complainant, where, the present applicant was also present and at that time, accused No.2 had assured the complainant that the work will be completed by. 10.06.2019 and on behalf of the present applicant, her husband - accused No.2 issued two cheques (1) bearing No. 072454 for an amount of Rs.70,00,000/- and (2) bearing No. 072455 for an amount of Rs.40,00,000/- drawn from Union Bank of India, Nizampura Branch, Vadodara, and when the complainant presented the aforesaid two cheques for payment, on non-completion of the work, the same were returnable with the endorsement "Payment stopped by the drawer" and instead of making the payment of the amount towards the returned cheques, the applicant raised another invoice for an amount of Rs.1,51,57,262/-. Thus, it was argued that after several telephonic conversations and personal meetings that took place between the complainant and the husband of the present applicant – accused No.2 issued cheques, which were again returned with the endorsement "Payment stopped by the drawer" and despite of service of notice, more particularly, husband of present applicant, i.e. accused No.2, refused to accept the said notice and also failed to make the payment within the period of 15 days, from the date of receipt of the said notice,

the impugned complaint, under the provisions of Section 138 of the NI Act, came to be lodged. It was, thus, argues that the concerned learned Magistrate having found the *prima facie* case has issued summons and hence, no interference is required at the hands of this Court.

5.3 Learned advocate, Mr. Solanki, lastly submitted that since husband-accused No.2 of the present applicant had posed himself as the CEO on behalf of proprietary firm, namely Jay Jaganath Air Equipments, and though, the said cheques had not been issued by the present applicant, deletion of name of Jay Jaganath Air Equipments would adversely affect the case of the original complainant and therefore, it was argued to reject the present application.

6. Since, the Coordinate Bench of this Court, vide order dated 28.04.2022, issued notice for final disposal, this matter was taken-up for final disposal, today. Section 138 of the NI Act, reads as under;

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient

to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”

6.1 Thus, it is only the drawer of the cheque, who can be made liable for penal action under the provisions of Section 138 of the NI Act. The applicant is the proprietor of Jay Jaganath Air Equipments and she happens to be the wife of accused No.2, who had undertaken to pay the outstanding dues. The case of the applicant is that the offence under Section 138 of the NI Act cannot be said to have been made

out against her, only on the ground that she is neither signatory to the said cheques nor did the said cheques were issued by Jay Jaganath Air Equipments, but, the same were issued by her husband, accused No.2, from his own savings account and therefore, according to the petitioner, the impugned complaint against her is not maintainable.

6.2 From a perusal of the impugned complaint, which is appended with the memo of this application indicates that the complainant in his complaint and more particularly Paragraph-9 thereof, has stated that the accused-firm, CEO Brijesh Ashwinbhai Pathak, had assured to complete the work on or before 10.06.2019 and they had also issued two cheques for Rs.70,00,000/- and Rs.40,00,000/- respectively, being cheque Nos. 072454 & 072455, Dated: 10.06.2019, drawn on Bank of India, Nizampura Branch, Vadodara, against the legal debt on behalf of accused No.1, Jay Jaganath Air Equipments. Even, in the verification it is clearly stated that the husband of Tejalben, i.e. the present applicant, on behalf of the company as a CEO had taken responsibility of the said cheques. Admittedly, the cheques in question were not signed by the present applicant in her personal capacity or as Proprietor of Jay Jaganath Air Equipments and the same were issued by accused No.2, Brijesh. Thus, it is only the drawer of the cheque, who can be prosecuted under Section 138 of the NI Act.

6.3 Under the circumstances, keeping the facts of the present case in view, admittedly, the present applicant is neither the drawer of the cheques nor did she sign those cheques and as noted herein above, those cheques were signed by her husband-accused No.2, namely Brijesh. Thus, the fact remains that the husband of the present applicant-accused No.2 issued the cheques in question and had also put his signatures, thereon. Thus, the present applicant, who is neither signed those cheques nor has issued those cheques from the bank account maintained by her, the provisions of Section 138 of the NI Act will have no application in the case on hand. The proceedings under Section 138 of the NI Act cannot be used as arm twisting tactics for recovery of amount, which is allegedly due from the husband of present applicant - accused No.2.

7. Thus, present application succeeds and the impugned complaint being, Criminal Case No. 33341 of 2019, pending before the Court of the learned in-charge Additional Chief Judicial Magistrate, Vadodara, and all other consequential proceedings are **quashed** and set aside only qua Tejal Brijesh Kumar Pathak. The case shall proceed qua other accused persons, i.e. against the firm and accused No.2- Brijesh Ashvinbhai Pathak, in accordance with law.

7.1 It is made clear that this Court has not gone into the disputed questions of facts, except, the technical issue of

the present applicant not being the drawer of the cheques in question. All the rights and contentions of both the sides are kept open. ***Disposed of***, accordingly. Direct service is permitted.

UMESH/-

Sd./-
(P. M. RAVAL, J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: CHAVDA UMESH(HC00203), Principal pvt Secretary, at High Court of Gujarat on 28/07/2026 17:14:57