

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) NO. 7500 of
2025****In F/CRIMINAL APPEAL NO. 14651 of 2025**

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M/S. NILKANTH CONCAST PRIVATE LIMITE THRO POA
JAGDISHCHANDRA PRABHUDAN GADHVI

Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR P S DATTA(11324) for the Applicant(s) No. 1
MS. C.M. SHAH, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE S.V. PINTO**Date : 18/08/2025****ORAL ORDER**

1. The present application is filed by the applicant – original complainant seeking leave to file an appeal against the order dated 25.02.2025 passed by the learned 4th Additional Chief Judicial Magistrate, Kutch at Gandhidham (hereinafter referred to as the “learned Trial Court”) in Criminal Case No. 2570/2019, whereby the learned Trial Court has dismissed the Criminal Case for want of prosecution as the applicant did not remain present under the provisions of Section 256(3) of Cr.P.C. and the respondent no. 2 - original accused came to be acquitted from the offence under Section 138 of Negotiable Instrument

Act, 1881 (hereinafter referred to “the NI Act” for short).

2. Heard learned advocate Mr. P.S. Datta for the applicant and learned APP Ms. C.M. Shah for the respondent State.

3. Learned advocate Mr. P.S. Datta for the applicant submits that the applicant and the respondent no. 2 were having business relationship and the respondent no. 2 had purchased MI55 Roll material from the applicant vide invoices detailed below:

Sr. No.	Retail Invoice No.	Date	Amount (Rs.)
1	9551	21.02.2019	7,63,224/-
2	9559	21.02.2019	8,17,268/-
3	9573	22.02.2019	8,07,598/-
Total Amount			23,88,090/-

Some of the amount was paid and some amount was adjusted towards the said return of material and an amount of Rs. 9,99,762/- was outstanding towards which the respondent no. 2 issued six cheques detailed below:

Sr. No.	Cheque No.	Date	Amount (Rs.)	Drawn on
1	000008	24.04.2019	1,00,000/-	DCB Bank Ltd,
2	000009	24.04.2019	1,00,000/-	
3	0000010	24.04.2019	1,00,000/-	

4	0000011	24.04.2019	1,00,000/-	Shapar Branch
5	0000012	24.04.2019	1,00,000/-	
6	0000013	24.04.2019	1,00,000/-	

The cheques were deposited by the applicant in their account with Indian Overseas Bank, Gandhidham Branch but the cheques returned unpaid with the endorsement “Payment Stopped by Drawer”. The demand statutory notice was given but the amount was not repaid within the stipulated period and hence, the applicant filed criminal complaint under Section 138 of the NI Act before the Court of Chief Judicial Magistrate, Kutch at Gandhidham which came to be registered as Criminal Case No. 2570/2019. The learned Trial Court was pleased to take cognizance of the offence and along with the complaint, the applicant had filed his examination in chief at Exh. 6 and the documents on which he relied upon vide list at Exh. 3. After the respondent no. 2 was duly served with the summons, he did not appear before the learned Trial Court and warrants were issued against the respondent no. 2. The respondent no. 2 appeared before the learned Trial Court and his plea was recorded at Exh. 15 and the matter was pending for cross

examination of the applicant. The learned advocate for the applicant had cross-examined the applicant and the documents were exhibited and thereafter, the matter was pending for further cross examination of the applicant. Learned advocate submits that the learned advocate for the applicant was present on every adjournment before the learned Trial Court and during the trial, the applicant suffered a fracture and could not appear before the learned Trial Court on two occasion but the learned Trial Court was pleased to pass the impugned order and dismiss the complaint for non-prosecution and acquit the respondent no. 2 from the offence under Section 138 of the NI Act. Learned advocate submits that the oral and documentary evidence of the applicant were on record and the same were not considered by the learned Trial Court when in fact, even on the date, the respondent no. 2 and his learned advocate were not present before the learned Trial Court. Learned advocate submits that the learned Trial Court has not appreciated that the applicant and his advocate were present on many occasions and hence, has urged this Court

to allow the application seeking leave to appeal.

4. Learned APP Ms. C.M. Shah for the respondent State has submitted that the learned Trial Court has considered the absence of the applicant and has passed the impugned order of acquittal but considering the copy of the rojkaam, necessary orders may be passed.

5. Considering the submissions of learned advocate for the applicant as also on perusal of the rojkaam produced on record, prima facie, it appears that the documents have not been properly appreciated in proper perspective. In the peculiar facts and circumstances of the case in the considered opinion of this Court the application deserves to be considered. Consequently, the application seeking leave to appeal is granted and disposed off accordingly.

VASIM S. SAIYED

(S. V. PINTO,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: VASIM SHABBIR SAIYED(HC01902), PRIVATE SECRETARY, at High Court of Gujarat on 18/08/2025 15:38:58