

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION NO. 247 of 2009****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

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Approved for Reporting	Yes	No

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KALPESHKUMAR RAMANBHAI PATEL

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR TEJAS M BAROT(2964) for the Applicant(s) No. 1

ABATED for the Respondent(s) No. 3

MR NK MAJMUDAR(430) for the Respondent(s) No. 2

MR ROHAN RAVAL, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**Date : 25/03/2026****ORAL JUDGMENT**

- 1) By way of present revision application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short "CrPC"), the applicant has prayed for quashing and setting aside judgment and order dated 31.01.2009 passed by learned Additional Chief Judicial Magistrate, Anand, in Criminal Case No.3004/2002.
- 2) Heard learned Senior Advocate Mr. Tejas M. Barot, for the applicant , Mr. Rohan Raval, learned APP for respondent No.1 – State of Gujarat and Mr. N.K.Majmudar, learened counsel for respondent No.2. Respondent No.3 stands abated.
- 3) The applicant herein filed a complaint against accused Nos.2 and 3 for the offence under sections 465, 467, 468, 471, 420, 406, 193, 197,

209, 506(2), 120B and 34 of IPC, stating inter alia that, one Navinbhai Bhailalbhai Patel with whom the applicant was already having partnership, retired and the applicant required new partner. Subsequently, the applicant and respondent No.2 became partners and on that very day i.e. on 29.06.2001, respondent No.1 bought five stamp papers of Rs.100 each for the purpose of using the same for preparing partnership deed. The said stamps were purchased by respondent No.2 in the name of Kanhaiya Transport and after preparing partnership deed, which bear signatures of applicant and respondent No.2 and the same was thereafter kept in the custody of respondent No.2. The applicant required telephone connection and for the same, true copy in two sets of partnership deed were made on 04.07.2001. At that point of time, respondent No.2 was counselor of Anand Municipality and Chairman of Octroi Department of Anand Municipality and therefore, the respondent No.2 got true copies of the partnership deed made from the original deed. Out of two sets, one set was produced by the applicant with telephone department, Ahmedabad for telephone connection. Thereafter, due to some differences between the parties, it was decided to discontinue the partnership. Thereafter, the applicant continues the business in the name of Kanhaiya Transport. It is to be noted that before formed partnership with the respondent No.2, the applicant was sole owner of 7 vehicles. The factum of ownership of the above vehicles being that of the applicant is also duly recorded in RTO record as well as insurance companies record.

- 4) Respondent No.2 filed Civil Suit No.391/2001 whereby the applicant came to be served with the plaint with documents relied on therein. One of the documents was the partnership deed dated 29.06.2001 between the applicant and respondent No.2. The respondent No.2 accused fabricated partnership deed inasmuch as though the partnership deed was never notarized, the deed produced with the

same also contained signatures of witnesses. When the applicant compared the true copy with the copy of partnership deed produced by respondent No.2, it was noticed that the factum regarding ownership of the vehicles was changed from that of the applicant to Kanhaiya Transport and the number of vehicle was also reduced to 4 from 7. Therefore, the applicant filed a complaint in writing to Anand Town Police Station which culminated into Criminal Case No.3004/2002.

- 5) The proceedings of Criminal Case No.3004/2002 adjudicated before the Court of learned Chief Judicial Magistrate, Anand and learned trial court after appreciating the material evidence produced on record, acquitted the respondent No.2 accused from the charged levelled against him vide order dated 31.01.2009.
- 6) Having heard the learned counsel for the respective parties and upon perusal of the material produced on record, it appears that the complaint was filed on 24.11.2001 in connection with an alleged partnership deed of Kanhaiya Transport Company, wherein the applicant and respondent No.2 were partners doing transport business. During the course of business, disputes arose between the parties, and on account of the same, Civil Suit No.391/2001 came to be filed before the Civil Court at Anand. In the said proceedings, a copy of the partnership deed purportedly notarized before a Notary Public was produced. The said notarized document was alleged to be forged, and on that basis, it was alleged that the accused had committed offences of cheating, criminal breach of trust and forgery. Accordingly, the complaint came to be registered.
- 7) The learned trial Court recorded the evidence of 11 witnesses and considered 7 documentary exhibits. The crux of the case pertains to the alleged forged partnership deed dated 30.06.2001 relating to Kanhaiya Transport Company, which was produced as Mark 29/1. It is

the case of the prosecution that the said document was forged and contained interpolations. However, during the course of investigation, the investigating agency failed to procure the original partnership deed. In the absence of the original document, the prosecution as well as the complainant failed to establish that the document in question was forged, and only a copy of the said document was produced and marked as 29/1. In absence of primary evidence, the contents of such document cannot be said to have been duly proved, and the same is not admissible in evidence. The learned trial Court therefore rightly appreciated the oral and documentary evidence on record. The Court relied upon the Notary witness - Manharbhai Gohil who was examined at Exh.26. The said witness had admitted that both witnesses had signed the document at Mark 29/1 in his presence. Further, the complainant Kalpeshbhai Ramanbhai Patel examined at Exh.320 admitted that the stamp paper was purchased by him on 29.06.2001 and that he had signed the document. He also admitted that he did not possess the original copy of the said agreement and had obtained only true copies from the Municipality.

- 8) It further appears that the said document had been produced earlier before the Municipality for obtaining a telephone connection, prior to its production in the civil proceedings. It is also noted that prior to this, the complainant's brother Pareshbhai Patel had filed Civil Suit No.75/2001 against the accused. In absence of the original partnership deed, mere production of the document marked as 29/1 cannot be said to have been duly proved on record, nor can it be conclusively held to be forged. The prosecution has thus failed to establish that the document at Mark 29/1 was forged. The learned trial Court has therefore properly appreciated the evidence and rightly acquitted the accused. So far as the offence under Section 506(2) of the IPC is concerned, no evidence has been produced, and

material witness Rupeshbhai has not been examined by the prosecution. Furthermore, no explanation has been offered by the complainant for the delay in lodging the complaint.

- 9) If we examine the reasons assigned by the learned trial Court, it appears that learned trial Court has already appreciated the facts and finding of fact not to be upset unless it is found perverse and finding of fact not to be substituted keeping in mind the ratio of Hon'ble Supreme Court in the case of **Amit Kapoor vs. Ramesh Chander & Anr.** reported in **(2012)9 SCC 460** as no perversity is found in the reasons assigned by the learned trial Court. Learned trial Court has properly assigned reasons and given the finding based on evidence led before him and hence also, no interference at the hands of this Court in exercise of revisional jurisdiction is required.
- 10) It would be appropriate to refer to the decision of the Hon'ble Supreme Court in the case of **Malkeet Singh Gill vs. State of Chhatisgarh** reported in **(2022)8 SCC 204** wherein the Hon'ble Supreme Court held that section 397/401 CrPC vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction of law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings. It is a settled legal proposition that if the Court below has recorded the finding of fact, the question of re-appreciation of evidence by the Court does not arise unless it is found to be totally perverse.

- 11) In the backdrop of the aforesaid conspectus, and in absence of any reliable, cogent, or trustworthy evidence, more particularly, the lack of material to substantiate the alleged forgery of the partnership deed, the impugned judgment of acquittal rendered by the learned trial Court warrants no interference. Consequently, the present revision application, being devoid of merit, stands **dismissed**. Rule is hereby discharged

(HASMUKH D. SUTHAR,J)

SUCHIT