

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL REVISION APPLICATION NO. 303 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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PURVIBEN P.KHAJURIA
 Versus
 NATWARLAL HARILAL CHAPANERI THRO' AJAY NATWARLAL
 CHAPANERI & ANR.

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Appearance:

BAILABLE WARRANT UNSERVED for the Applicant(s) No. 1
 HCLS COMMITTEE(4998) for the Applicant(s) No. 1
 MR VASHISTHA M JOSHI(8972) for the Applicant(s) No. 1
 MR DHAIRYAWAN D BHATT(11817) for the Respondent(s) No. 1
 MR ROHAN H. RAVAL, APP for the Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 15/04/2026

JUDGMENT

- 1) By way of present revision application under Sections 397 read with 401 of the Code of Criminal Procedure, 1973, the applicant has prayed for quashing and setting aside the judgment and order of conviction and sentence dated 31.12.2003 passed by the learned Judicial Magistrate First Class, Rajkot, in Criminal Case No.271 of 2002, whereby, the trial Court has been pleased to hold the applicant guilty for the offence punishable under

Section 138 of the Negotiable Instruments Act (which shall hereinafter be referred to as "**NI Act**" for short) and sentenced to undergo simple imprisonment for six months along with fine of Rs.5,000/- failing which to undergo further 15 days simple imprisonment. The said order was assailed by way of filing Criminal Appeal No.1 of 2004, wherein, vide order dated 12.09.2006 passed by the learned Additional Sessions Judge, 8th Fast Track Court, Rajkot, the appeal came to be dismissed and the order of conviction and sentence has been confirmed. Hence, the present Revision Application is filed by the applicant-accused.

- 2) Brief facts of the case is that, the respondent no.1- complainant had given loan of Rs.4,50,000/- to the applicant - accused. When the complainant demanded his amount from the accused, the accused had issued three post dated cheques of State Bank of India, Rajkot, to the complainant on 16.05.2021, viz., cheque no.632147 of Rs.1,00,000/-, cheque no.632146 of Rs.1,50,000/- and cheque no.632145 of Rs.2,00,000/-. Further, the accused had given promise and assurance that till 31.08.2021 all these cheques will be cleared. However, on presentation the cheques were dishonoured with endorsement of "insufficient funds and exceed arrangement". Thereafter, the complainant issued a statutory notice dated 27.11.2001 to the accused, but the

accused did not pay the amount. Therefore, a complaint came to be registered under section 138 of the NI Act before learned JMFC Court, in which the applicant was convicted. The said conviction was challenged before the learned Additional Sessions Judge, Rajkot, by filing Criminal Appeal No.01 of 2004, which came to be dismissed vide order dated 12.09.2006.

- 3) The earlier learned Advocate for the applicant was retired and Advocate notice was issued, however, the same remained unserved to the applicant. Thereafter, learned Advocate from the HCLS Committee has been appointed and the matter is taken up for hearing.
- 4) Learned Advocate Mr. Vashistha M. Joshi, for the applicant has submitted that the applicant is a lady and a senior citizen and the applicant is falsely convicted and both the courts below have erred in not considering the fact that the before issuance of the notice the amount of Rs.2,80,000/- had been paid and the same is admitted on the record and no legally enforceable debt is proved on the record. Hence, he has requested to allow the present revision application.
- 5) Learned Advocate Mr. Dhairyawan D. Bhatt, for the complainant as well as learned APP Mr. Rohan H. Raval, for the respondent State have jointly opposed the present application and submitted that, the learned Courts below have not committed any error in

recording the conviction of the applicant. After appreciating the material produced on record, learned Courts below have passed the impugned orders, which are just, legal and proper. Learned Advocate for the complainant has further submitted that prior to issuance of notice the amount of Rs.2,80,000/- was paid towards another transactions and that cheque numbers and amounts were given in the communication at Exhibit 22, in connection of the dishonour of the said cheque notice came to be issued and complaint was filed. He has further submitted that signature of the accused on the cheque and issuance of the cheques are not disputed as the accused failed to rebut the presumption. Hence, they have requested to dismiss the present revision application.

- 6) Having heard learned Advocates for the respective parties and perusing the material placed on record, it appears that the applicant – accused availed loan of Rs.4,50,000/- from the respondent no.1 – complainant and assured to return the same. However, when the complainant demanded the said amount from the accused, the accused issued three post dated cheques of State Bank of India, Rajkot, to the complainant on 16.05.2021, viz., cheque no.632147 of Rs.1,00,000/-, cheque no.632146 of Rs.1,50,000/- and cheque no.632145 of Rs.2,00,000/- duly signed by the applicant, however, when the cheques were presented before the bank it got dishonored with

an endorsement of "insufficient funds and exceed arrangement". In this regard, the complaint was filed. In order to prove the said complaint, the complainant has examined four witnesses i.e. complainant himself at Exhibit 18, Girirajsinh Chandrasinh Jadeja at Exhibit 65, Girish Gangdas at Exhibit 68 and Ramesh Gokuldas at Exhibit 72 and the cheques in question are produced at Exhibit 19 to 21, return memo at Exhibit 27 to 29, statutory notice at Exhibit 30, acknowledgement slip at Mark 32/1. After recording the evidence, further statement of accused came to be recorded under Section 313 of the CrPC. Though opportunity to rebut the presumption and to examine the witness or produce evidence was given to the accused before the learned trial Court, the accused did not do so.

- 7) Further perusal of record reveals that the complaint came to be filed pursuant to the cheques issued by the accused and if we peruse one communication at Exhibit 22 produced by the complainant, wherein, the applicant has made a request to replace the cheques with new cheques bearing Nos.632144 for Rs.2,80,000/-, 632145 for Rs.2,00,000/-, 632146 for Rs.1,50,000/- and 632147 for Rs.1,00,000/-, and for the cheque nos.63215, 632146 and 632147 the complaint is filed. So far the defence of payment of Rs.2,80,000/- prior to issuance of notice is irrelevant as no such amount is once again claimed and said

communication is not disputed by the applicant. It is also not in dispute that the cheques were returned due to insufficiency of funds. Hence, statutory presumption under Section 139 of the NI Act is required to be drawn. In reply of the notice also only defence is taken that without intimating and keeping the promise cheques have been tendered before the bank and got dishonoured except this no defence is taken. Even in the further statement of the accused no such defence is taken. Hence, statutory presumption under Section 139 of the NI Act is required to be drawn. The accused failed to rebut the said evidence based on preponderance of probabilities. Hence, in view of the law laid down by the Hon'ble Apex Court in the case of **Tedhi Singh v. Narayan Dass Mahant** reported in **(2022) 6 SCC 735** and **Kalamani Tex v. P. Balasubramanian**, reported in **(2021) 5 SCC 283**, the effect of admission regarding the signature on the cheque is explained. Once the signature is admitted, it is required to be presumed that the cheque was issued towards consideration for a legally enforceable debt. As per explanation of legal position on how to rebut the presumption under Section 139 of the NI Act and to raise the presumption under Section 139 of the NI Act, the Hon'ble Apex court has clearly explained in the case of **Rajesh Jain v. Ajay Singh** reported in **(2023) 10 SCC 148**. Considering the aforesaid fact, presumption under Section 118 of

the NI Act. It appears that both the Courts have properly exercised the jurisdiction as the cheque was presented before the Bank and same came to be dishonored with endorsement "insufficient funds and exceed arrangement". Within the prescribed time limit, the notice of demand was issued pursuant to which the complaint was filed within limitation period.

- 8) Furthermore, the Appellate Court has also reappreciated the evidence and came to the conclusion that the learned trial Court has not committed any error and considered the admission of the signature and issuance of cheque are proved on the part of the accused and the accused failed to rebut the presumption under Section 118 and 139 of the NI Act.
- 9) Moreover, the revisional jurisdiction can be exercised where there is a palpable error or non-compliance with the provision of law and where decision is completely erroneous and where the judicial discretion is exercised arbitrarily. Herein, 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 Courts below. Both the Courts below have properly assigned reasons and given the finding based on evidence led before him, therefore, no case is made out to upset the concurrent findings of the learned trial Court and Appellate Court.

- 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 Courts below have 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) It is needless to say that the offence under Section 138 of the NI

Act is *quasi* criminal in character and is also compoundable one and the punishment under the NI Act is not a means of seeking retribution but is a more means to ensure payment of money and to promote credibility of cheques as a trustworthy substitute for cash payment.

- 12) In wake of aforesaid conspectus, present revision application fails and stands **dismissed**. Rule is hereby discharged. Interim relief granted earlier stands vacated forthwith. The applicant – accused to forthwith surrender before the learned trial Court to serve the remaining sentence, if any.
- 13) The Registry is directed to release the amount, if any, lying with it, in favour of the complainant / legal heirs of the complainant after proper verification.

ANKIT JANSARI

(HASMUKH D. SUTHAR,J)