

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION NO. 762 of 2009****With****R/CRIMINAL REVISION APPLICATION NO. 763 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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BHUPESH JAYANTILAL SHAH**Versus****ASHOKKUMAR P GUPTA & ANR.****Appearance:****BAILABLE WARRANT UNSERVED for the Applicant(s) No. 1****HCLS COMMITTEE(4998) for the Applicant(s) No. 1****KURVEN K DESAI(7786) for the Applicant(s) No. 1****MR AFTABHUSEN ANSARI(5320) for the Respondent(s) No. 1****MR SM SHUKLA(1192) for the Respondent(s) No. 1****MR ROHAN RAVAL, APP for the Respondent(s) No. 2****CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR****Date : 23/03/2026****COMMON JUDGMENT**

- 1) By way of present revision applications 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 31.07.2009 passed by the learned Metropolitan Magistrate, Ni Act, Court No.6, Ahmedabad, in Criminal Case No.245 of 2009, 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

of one year and also directed to pay fine of Rs.1,28,583/- i.e. cheque amount. The said order was assailed by way of filing Criminal Appeal No.198 of 2009, wherein, vide order dated 20.11.2009 passed by the learned Additional City Sessions Judge, Ahmedabad, the appeal came to be dismissed and the order of learned trial Court has been confirmed and upheld. Hence, present Revision Applications are filed by the applicant-accused.

- 2) Learned Advocate for the applicant has submitted that during the pendency of the present revision application, the applicant has deposited the cheque amount. In view of above, once the amount being deposited and as the offence under Section 138 of the NI Act is quasi-criminal in character and is compoundable and punishment under the NI Act is not a means of seeking retribution but is more a means to ensure payment of money and to promote credibility of cheques as a trustworthy substitute for cash payment. In absence of any perversity and no ground is found to upset the concurrent findings of the learned trial Court and Appellate Court and it is not open for Revisional Court to re-analyse and re-interpret the evidence in revisional jurisdiction. No case is made out to interfere with the reasons assigned by both the Courts.
- 3) At the same time, this Court has taken into consideration the object of the Act as accused made payment and complainant has received the same, hence, in view of judgment of the Hon'ble Supreme Court ***Sanjabij Tari Vs Kishore S. Borcar***, *Neutral Citation 2025 INSC 1158*, maintaining the conviction this Court is inclined to extend the benefit under the Probation of Offenders Act, 1958, to the applicant-accused.

- 4) Accordingly, the applicant – accused is directed to be released on probation of good conduct under Section 4 of the Probation of Offenders Act, upon execution of probation bond in sum of Rs.20,000/-, with one surety of like amount for a period of 1 year.
- 5) It is hereby further directed that the applicant - accused shall receive the sentence as and when called upon till the said period and the applicant shall maintain peace during above mentioned period of 1 year. The above mentioned bond under Section 4 of the Probation of Offenders Act, be submitted before the learned trial Court within 15 days of passing of this judgment.
- 6) Accordingly, present revision applications are disposed of. Record and proceedings, if any, be sent back to the concerned Court forthwith.

(HASMUKH D. SUTHAR,J)

SUCHIT