

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 2354 of 2008****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE SANJEEV J.THAKER**

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Approved for Reporting	Yes	No
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HARSHADKUMAR VAIKUTHRAM HALANI

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR. SHIVAM N THAKKAR(10024) for the Appellant(s) No. 1

MR.KARNA H DHOMSE(6684) for the Opponent(s)/Respondent(s) No. 2

MS SHRUTI PATHAK, APP for the Opponent(s)/Respondent(s) No. 1

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CORAM:HONOURABLE MR.JUSTICE SANJEEV J.THAKER**Date : 19/01/2026****ORAL JUDGMENT**

1. Feeling aggrieved by and dissatisfied with the judgment and order of acquittal dated 17.3.2008, passed by the learned Judicial Magistrate, First Class, at Diyodar, District : Banaskantha in Criminal Case No.551 of 2000, for the offence punishable under Section 138 of the Negotiable Instruments Act, the appellant – original complainant has preferred this appeal under Section 378 of the Code of Criminal Procedure, 1973 (for short, “**the Code**”).

2. The brief facts leading to filing of this appeal are

such that the complainant filed a complaint to the effect that the respondent-accused had borrowed Rs.1,75,000/- from the appellant, that the respondent had given a cheque dated 24.04.2000 to repay the said amount drawn on the State Bank of India, Bhabhar Branch in favour of the appellant, that on presenting the said cheque in the account of the Banaskantha District Central Co-operative Bank Ltd., Diyodar, the same was dishonoured with the endorsement 'funds insufficient'; thereafter, he again presented the cheque for clearance on 13.06.2000, but again the cheque was dishonoured on 24.06.2000 with endorsement 'funds insufficient'. Therefore, the complainant-appellant served a legal notice dated 24.06.2000 demanding the amount of cheque within 15 days from the receipt of the notice, but the said notice was not accepted by the respondent; therefore, the complainant filed the complaint.

3. Considering the verification of the complainant and the documents, the complaint was registered, the accused was called for by serving the summons, the accused remained present before the Court, he was provided with the complaint and the documents and on recording the statement of the accused, he pleaded not guilty and claimed to be tried.

4. In order to prove the case, various oral and

documentary evidence was produced before the trial Court, which are described in the impugned judgment.

5. After hearing both the parties and after analysis of evidence adduced by the complainant, the learned trial Judge acquitted the accused for the offence, by holding that the complainant has failed to prove the case beyond reasonable doubt.

6. Learned advocate for the appellant-original complainant has pointed out the facts of the case and having taken this Court through both, oral and documentary evidence, recorded before the learned trial Court, would submit that the learned trial Court has failed to appreciate the evidence in true sense and perspective; and that the trial Court has committed error in acquitting the accused. It is submitted that the learned trial Court ought not to have given much emphasis to the contradictions and/or omissions appearing in the evidence and ought to have given weightage to the dots that connect the accused with the offence in question. It is submitted that the learned trial Court has erroneously come to the conclusion that the complainant has failed to prove its case. It is also submitted that the learned Judge ought to have seen that the evidence produced on record is reliable and believable and it was proved beyond

reasonable doubt that the accused had committed an offence in question. It is, therefore, submitted that this Court may allow this appeal by appreciating the evidence led before the learned trial Court.

6.1 It is submitted that the learned trial Court has erroneously held that the appellant-complainant has not proved that he had lent Rs.1,75,000/- to the respondent, but it is well settled principle of law that once the cheque is issued by the accused, the presumption is always to the effect that the cheque is issued to discharge the liability towards the person in whose favour the cheque is issued and therefore, it was not necessary for the appellant to prove lending of money to the respondent. It is further submitted that though the appellant has produced enough documentary evidence to show that the cheque was deposited by the appellant and the same was returned with endorsement 'funds insufficient' and also that the notice was served by registered post, the learned trial Court has recorded the acquittal of the accused, which is against the evidence produced on the record.

7. As against that, learned advocate for the respondent/s would support the impugned judgment passed by the learned trial Court and has submitted that the learned

trial Court has not committed any error in acquitting the accused. The trial Court has taken possible view as the complainant has failed to prove its case beyond reasonable doubt. Therefore, it is prayed to dismiss the present appeal by confirming the impugned judgment and order passed by the learned trial Court.

7.1 It is further submitted by learned advocate for the respondent/s that the complainant has not shown anything to prove that the debt was a legally enforceable debt; that the learned trial Court has, after considering the fact that the complainant has stated in the complaint that the cheque was issued of Shri Ram Traders, Diyodar Branch, whereas the account number shown at Exh.57 is of Shri Ram Traders, Bhabhar, that except oral evidence, no other documentary evidence is produced to prove as to why the cheque was deposited, when the same was dishonoured etc., acquitted the respondent-accused. It is therefore submitted that the learned trial Court has not committed any error in passing the order of acquittal of the accused.

8. In the aforesaid background, considering the oral as well as documentary evidence on record, independently and dispassionately and considering the impugned judgment and order of the trial Court, the following aspects weighed with

the Court :

8.1 The trial Court has taken into consideration the fact that the complaint under Section 138 of the NI Act has been filed against the Proprietor of Shri Ram Traders, Diyodar. It is a matter of record that the account, from which the said cheque was given, was of Shri Ram Traders, Bhabhar. The complainant has examined P.W.7 - Naranbhai Ravjibhai Chauhan, vide Exh.56, who was the Branch Manager at State Bank of India, Bhabhar. In his deposition, he has stated that in the bank, the accused – Vaikunthram Chunilal Thakkar had Current Account No.71251 and the said account was in the name of Shri Ram Traders, Bhabhar and the abstract of account that he had provided was of Shri Ram Traders, Bhabhar. Whereas, in his cross-examination, he had stated that he is not aware whether the abstract of account which he has produced is of Shri Ram Traders Bhabhar or Diyodar.

It is the case of the complainant that the accused is a Proprietor of Shri Ram Traders, Diyodar and Shri Ram Traders, Bhabhar, but the fact remains that the present complaint has been filed specifically against the Proprietor of Shri Ram Traders, Diyodar. The complainant has not been able to prove that the said account is of Shri Ram Traders, Diyodar. Therefore, the Magistrate Court has rightly acquitted

the accused of the offence under Section 138 of the NI Act.

8.2 Moreover, the complainant has also not been able to prove the fact that he had given soft loan to the accused in March, 2000. It was the case of the accused that they had not received any amount from the complainant. The complainant has miserably failed to prove the fact that he had handed over the said amount by March, 2000.

8.3 On careful reading of Section 138 of the NI Act, before the person can be prosecuted, it has to be established that the cheque is drawn by a person and on an account maintained by him with a banker and should be issued for the 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, but in the present case, the complainant is not able to prove that the cheque was issued from his account and that the cheque was issued by the accused against the loan given to him. Therefore also, the learned trial Court has not committed any error in acquitting the accused.

9. Further, learned advocate for the appellant is not in a position to show any evidence to take a contrary view in the matter or that the approach of the Court below is vitiated by some manifest illegality or that the decision is

perverse or that the Court below has ignored the material evidence on record. In above view of the matter, this Court is of the considered opinion that the Court below was completely justified in passing impugned judgment and order.

10. Considering the aforesaid facts and circumstances of the case and law laid down by the Hon'ble Supreme Court while considering the scope of appeal under Section 378 of the Code of Criminal Procedure, 1973, no case is made out to interfere with the impugned judgment and order of acquittal.

11. In view of above facts and circumstances of the case, on my careful re-appreciation of the entire evidence, I found that there is no infirmity or irregularity in the findings of fact recorded by learned trial Court and under the circumstances, the learned trial Court has rightly acquitted the respondent/s - accused for the elaborate reasons stated in the impugned judgment and I also endorse the view/finding of the learned trial Court leading to the acquittal.

12. In view of the above and for the reasons stated above, the present Criminal Appeal fails to prove its case and the same deserves to be dismissed and is *dismissed*,

accordingly. Record & Proceedings be remitted to the concerned trial Court forthwith.

SRILATHA

(SANJEEV J.THAKER,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SRILATHA VENKATARAO UPADHYAYULA(HC00185), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 19/01/2026 17:53:30