

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 282 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MRS. JUSTICE M. K. THAKKER

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Approved for Reporting	Yes	No
		✓
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INTECH PHARMA PVT.LTD & ORS.
 Versus
 STATE OF GUJARAT & ANR.

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Appearance:
 MR BM MANGUKIYA(437) for the Applicant(s) No. 1,2,3
 MS BELA A PRAJAPATI(1946) for the Applicant(s) No. 1,2,3
 MR.KRUNAL MODI for MR ANAL S SHAH(3988) for the Respondent(s) No. 2
 MR.RONAK RAWAL, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MRS. JUSTICE M. K. THAKKER

Date : 08/04/2026

JUDGMENT

1. The present application is filed for quashment of the complaint being Criminal Complaint No.951/2012 lodged by the present respondent no.2 before the Metropolitan Magistrate Court, Ahmedabad under section 138 read with section 141 of the Negotiable Instruments Act, 1881.
2. Heard learned advocate Mr.B.M.Mangukiya for the petitioner and learned advocate Mr.Krunal Modi for the

respondent no.2.

2.1. Learned advocate Mr.B.M.Mangukiya submits that the present petition is filed on the ground that respondent no.2, although received payments towards cheque, has retained the same and subsequently, deposited in the bank and on dishonouring of the same, the complaint is filed. Learned advocate Mr.B.M.Mangukiya fairly admits that this matter would be matter of defence and therefore, it is required to be tried before the learned trial court and in that background, it is submitted to pass appropriate order.

2.2. Per contra, learned advocate Mr.Krunal Modi, appearing for the respondent no.2-complainant submits that from the first day i.e from the date of issuance of notice on 08.01.2014, though this Court has not granted protection to the petitioner, but did not appear before the learned trial court. It is further submitted that time and again orders were passed however, instead of appearing before the learned trial court the petitioner has flouted the order of this Court. Referring the order dated 23.01.2019 and 11.02.2019, learned advocate Mr.Krunal Modi has submitted that though specific

directions were issued to the learned trial court to expedite the trial however, due to non appearance of the present petitioner, the learned trial court did not proceed with the trial. It is submitted that on 07.11.2023 statement is made by the learned advocate for the petitioner that he is ready to hand over the cheque amount and on direction issued by this Court, amount is deposited by way of Demand Draft with the Registry of this Court. It is submitted that the complainant is persuing for his dishonored cheque since 2012 and after the period of 14 years only the cheque amount is offered which is insufficient and has prayed to give more amount as provided under section 138 of the N.I.Act. It is submitted that as the petitioner has offered only the cheque amount he is not ready to compound the offence and in that background petitioner which is filed on the basis of defence which is raised is required to be dismissed with heavy cost.

3. Having considered the submissions made by the learned advocates for the respective parties and on referring the averments made in the petition, except bare words that despite the payment was made through RTGS the

petitioner has retained the amount, in the opinion of this Court this would be only defence which is required to be tried by the learned trial court and after evaluation of the evidence produced by both the parties learned trial court would be able to examine the defence. At this stage learned advocate Mr.B.M.Mangukiya has offered the cheque amount however, on referring the provisions of section 138 which provides that at the end of the trial if the learned trial court would convict accused then he would be punished with imprisonment which may extend to two years or with fine which may extend to twice the amount of cheque or with both.

4. This Court has referred decision rendered by the Apex Court in the case of ***R.Vijayan Vs Baby reported in 2011 (0) AIJEL-SC 50461***, wherein the Apex Court has held as under:

“18. One other solution is a further amendment to the provision of Chapter XVII so that in all cases where there is a conviction, there should be a consequential levy of fine of an amount sufficient to cover the cheque amount and interest thereon at a fixed rate of 9% per annum interest, followed by award of such sum as compensation from the fine amount. This would lead to uniformity in decisions, avoid multiplicity of proceedings (one for enforcing civil liability and another for enforcing criminal liability) and achieve the object of

Chapter XVII of the Act, which is to increase the credibility of the instrument. This is however a matter for the Law Commission of India to consider.”

5. In the opinion of this Court offering the cheque amount would not suffice when the complainant has suffered for 14 years and had made huge expenses towards litigation. The petition which is filed, no stay is granted by this Court and despite the same, the petitioner did not cooperate with the trial. In that background, this Court is of the view that the present application deserves to be dismissed with cost.
6. Resultantly, the present application is dismissed with cost of Rs.25,000/-, which is to be deposited within a period of two weeks from today. Registry of this Court shall disburse the same in favour of the complainant, after due verification.
7. The demand draft which is deposited before the Registry of this Court shall be transferred to the nazir of the learned trial court where the trial is pending.

ARCHANA S. PILLAI

(M. K. THAKKER,J)