

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL REVISION APPLICATION NO. 1266 of 2019

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**PRAKASH RAMCHANDRA SHYAMDASANI THRO POA HOLDER HARESH
RAMCHANDRA SHYAMDASANI**

Versus
STATE OF GUJARAT

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**Appearance: MR SALIN MEHTA, SENIOR ADVOCATE WITH SAIRICA S
RAJU(8761) for the Applicant(s) No. 1
for the Respondent(s) No. 2
MS MONALI BHATT, APP for the Respondent(s) No. 1**

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CORAM: HONOURABLE MR.JUSTICE B.N. KARIA

Date : 05/03/2020

ORAL ORDER

1. The applicant has challenged the impugned judgment and order dated 09.05.2019 passed by the Additional Sessions Judge, Ahmedabad in Criminal Appeal No.238 of 2018.

2. Heard Mr.Salin Mehta, learned Senior Advocate for the applicant.

3. Mr.Salin Mehta, learned Senior Advocate has submitted that learned Sessions Judge has failed to appreciate the principle laid down by the Negotiable Instruments Act, 1881 and even decided contrary to the legislative intent and prescribed procedure of law. That learned Sessions Judge has committed an error in allowing the respondent no.2 to raise the defence of fact for the very first time which was never raised before learned Trial Court. That learned Sessions Judge has also erred in appreciating the contention raised by the respondent no.2 with regard to the authority of power of attorney holder, which is essentially a question

of fact and to be dealt with by learned Trial Court. That the respondent no.2 had never contradicted or even put effort to create reasonable doubt against the version of the applicant before learned Trial Court. That it was the legal enforceable debt of the respondent no.2 and was the liability of the respondent no.2 as well present applicant the power of attorney holder being cross-examined by the respondent no.2. That the complaint itself was maintainable against the respondent no.2 which was answered correctly by learned Sessions Judge. That no specific averments made in the complaint that power of attorney had knowledge of the said transaction were erroneous. Referring the complaint by learned advocate, it is submitted that the power of attorney holder was completely aware of all the facts being HUF and Karta of the family of the complainant. That in other group of cases, conviction was affirmed by learned Sessions Judge against which, respondent no.2 has preferred Criminal Revision Application No.919 of 2019, wherein notice was issued by this Court.

4. Issue requires consideration.

5. Hence, **Notice**, returnable on 23.03.2020. Learned APP waives service of notice on behalf of the respondent-State.

(B.N. KARIA, J)

rakesh/