

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) NO. 19456
of 2025****In F/CRIMINAL APPEAL NO. 37618 of 2025**

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**KUNDAN KHAASERAO GARUD
Versus
JAYRAJ ATMARAM THAKWANI & ANR.**

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**Appearance:
MS HASMEET B GILL(11870) for the Applicant(s) No. 1
MS. VRUNDA SHAH, APP for the Respondent(s) no. 2**

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CORAM:HONOURABLE MS. JUSTICE S.V. PINTO**Date : 03/10/2025****ORAL ORDER**

1. The present application is filed by the applicant – original complainant seeking leave to file an appeal against the judgement and order dated 30.07.2025 passed by the learned 3rd Additional Sessions Judge, Vadodara in Criminal Appeal no. 259/2024, whereby, the learned Trial Court was pleased to acquit the accused from the offence under Section 138 of Negotiable Instrument Act, 1881 (hereinafter referred to “the NI Act” for short).

2. Heard learned advocate Ms. Hasmeet Gill for the applicant and learned APP Ms. Vrunda Shah for the respondent State.

3. Learned advocate Ms. Hasmeet Gill for the applicant submits that the applicant and the respondent no. 1 were known to each other and were friends and the respondent no. 1 was in constructions business and wanted some financial assistance and between the years 2014 and 2018, the applicant had advanced an amount of Rs. 15,00,000/- as a hand loan to the respondent no. 1. Towards the outstanding amount, the respondent no. 1 had issued three cheques as below:

Sr. No.	Cheque No.	Bank	Amount (Rs.)	Endorsement
1	048538	Central Bank of India, Nizampura Branch, Vadodara	1,00,000/-	Funds Insufficient
2	048536	Central Bank of India, Nizampura Branch, Vadodara	40,000/-	Account Blocked
3	070666	Central Bank of India, Nizampura Branch, Vadodara	1,52,000/-	Account Blocked

The cheques were deposited by the applicant in his account with Indian Overseas Bank, Mehta Pol Branch but the cheque no. 048538 returned with an endorsement “Funds Insufficient” and cheque nos. 048536 and 070666 returned with an endorsement “Account Blocked”. The demand

statutory notice was given which was duly served but the respondent no. 1 did not repay the amount within the stipulated period and hence, the applicant filed the Criminal Case under Section 138 of the NI Act before the Chief Judicial Magistrate, Vadodara which came to be registered as Criminal Case No. 10923/2020. The respondent no. 1 was duly served with the summons and he appeared before the learned Trial Court and after his plea was recorded at Exh. 10, the applicant stepped into the witness box and deposed on oath at Exh. 4 and produced 14 documentary evidence in support of his case. After the closing pursis was filed by the learned advocate for the applicant, the further statement of the respondent no. 1 was recorded, wherein, the respondent no. 1 denied the evidence and did not step into the witness box but produced three documentary evidence in support of his case. After the arguments of both the learned advocates for the parties were heard, the learned Trial Court, by the judgement and order dated 01.03.2024, was pleased to find the respondent no. 1 guilty for the offence under Section 138 of the NI Act and

sentenced the respondent no. 1 to simple imprisonment for one year and was further pleased to order the respondent no. 1 to pay an amount of Rs. 2,92,000/- to the respondent no. 1 under Section 357 of Code of Criminal Procedure, 1973 and in default, further simple imprisonment for six months.

3.1 Being aggrieved by the same, the respondent no. 1 filed Criminal Appeal no. 259/2024 before the Sessions Court, Vadodara and after the arguments for both the parties were heard, the learned 3rd Additional Sessions Judge, Vadodara by the impugned judgement and order dated 30.07.2025, was pleased to set aside the judgement and order of conviction and acquit the respondent no. 1 from the offence under Section 138 of the NI Act. Learned advocate submits that the learned 3rd Additional Sessions Judge, Vadodara has set aside the judgement and order of conviction only on the ground that the applicant has not been able to prove the financial capacity and the presumption was successfully rebutted by the respondent no. 1 up to the extent of preponderance of probability but in

fact, the applicant had proved that the cheques were issued for the legally enforceable debt as a deed was executed between the parties, wherein, the number of cheques with the amounts were mentioned and the deed was a notarized deed which was, in any manner, not denied by the respondent no. 1. Learned advocate submits that the same set of evidence produced on record by the applicant have been appreciated in a different manner by both the Courts and the learned Sessions Court has not appreciated the evidence in proper perspective. Learned advocate submits that the applicant has a good case on merits and learned advocate urges this Court to allow the leave to appeal.

4. Learned APP Ms. Vrunda Shah for the respondent State has submitted that the learned Sessions Court has considered all the documents produced by the applicant and has also considered the evidence and has passed the impugned order of acquittal considering the settled principles of law and hence, the leave to appeal may not be granted.

5. Considering the arguments of the learned advocate for the applicant as also both the judgements and orders, it appears that the same set of evidence have been appreciated by two different Courts in different manner and the issue requires consideration.

6. In the peculiar facts and circumstances of the case in the considered opinion of this Court the application deserves to be considered. Consequently, the application for leave to appeal is granted and disposed off accordingly.

VASIM S. SAIYED

(S. V. PINTO,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: VASIM SHABBIR SAIYED(HC01902), PRIVATE SECRETARY, at High Court of Gujarat on 06/10/2025 16:33:28