IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) NO. 17281 of 2024

In F/CRIMINAL APPEAL/20658/2024

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KASHISH THRO ITS POA ANIL HARESH JAISINGHANI

Versus

STATE OF GUJARAT & ORS.

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Appearance:
MR VEDANT D GAIKWAD(10444) for the Applicant(s) No. 1
MR NIRAV C THAKKAR(2206) for the Respondent(s) No. 3
MR. YUVRAJ BRAHMBHATT, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MS. JUSTICE S.V. PINTO**

Date : 29/10/2026

ORAL ORDER

Draft amendment to be carried out forthwith.

1. **Rule**. Learned APP waives service of rule for the respondent-State.

2. The present application is filed by the applicant – original complainant seeking leave to file an appeal against the judgement and order dated 16.12.2023 passed by the learned 10th Additional Sessions Judge, Vadodara in Criminal Appeal no. 359/2022, whereby, the learned Sessions 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).

3. Heard learned advocate Mr. Vedant Gaikwad for the applicant, learned advocate Mr. S.C. Sharma for learned advocate Mr. Nirav Thakkar for the respondent nos. 2 and 3 and learned APP Mr. Yuvraj Brahmbhatt for the respondent State.

4. Learned advocate Mr. Vedant Gaikwad for the applicant submits that the applicant – original complainant Kashish is a proprietary firm which filed the complaint through its power of attorney holder Mr. Anil Haresh Jaisinghani. The original accused no. 2 – Mr. Ravi Selani, on behalf of the original accused no. 1 – Sharmili Boutique used to purchase western outfits on credit from the applicant and the accused used to regularly request the applicant, over phone and in-person to send the goods at their place of business and the applicant used to dispatch the goods accordingly. Learned advocate submits that between 01.08.2018 and 28.09.2018, the applicant had sent goods worth Rs. 5,69,024/- to the accused vide seven invoices. Thereafter, the applicant repeatedly requested the accused to pay the said amount, pursuant to which the

original accused no. 2, giving an assurance on behalf of the original accused no. 1 and towards the discharge of the said legally enforceable liability issued two cheques of HDFC Bank from their account being cheque no. 001123 dated 14.08.2019 for Rs. 2,50,000/- and cheque no. 001120 dated 19.08.2019 for Rs. 3,00,000/- with an assurance that the amount of the cheques would be realised, however, both the cheques were returned unpaid on 17.08.2019 and 21.08.2019 respectively with the endorsement “insufficient funds”. Learned advocate submits that the applicant issued a statutory demand notice dated 11.09.2019 calling upon the accused to pay the amount of the cheques. The notice sent to the original accused no. 1 was returned on 14.09.2019 with the postal endorsement “left” dated 12.09.2019 whereas the notice sent to the original accused no. 2 was served on 16.09.2019 but the accused did not pay the amount of the cheques to the applicant within the stipulated period and hence, the applicant filed the complaint under Sections 138 and 142 of the NI Act before the Court of Chief Judicial Magistrate which came to be

registered as Criminal Case No. 32103/2019. The accused was duly served with the summons and appeared before the learned Trial Court, was furnished with the copies of the complaint and the documents and on the plea being recorded, the accused pleaded not guilty and the trial was proceeded against the accused. After the trial was concluded, the learned Trial Court, by the judgement and order dated 19.09.2022, was pleased to find the accused guilty of the offence under Section 138 of the NI Act and convicted and sentenced the respondent no. 3 to simple imprisonment for one year and was further pleased to order the respondent no. 3 to pay an amount of Rs. 5,50,000/- to the applicant under Section 357 of Code of Criminal Procedure, 1973 and in default, further simple imprisonment for three months.

4.1 Being aggrieved by the same, the accused filed Criminal Appeal no. 359/2022 before the Sessions Court, Vadodara and after the arguments for both the parties were heard, the learned 10th Additional Sessions Judge, Vadodara by the impugned judgement and order dated 16.12.2023

was pleased to set aside the judgement and order of conviction and acquit the accused from the offence under Section 138 of the NI Act. Learned advocate submits that the applicant had proved that the complaint was validly filed through the power of attorney holder who was aware of the facts and competent to depose, that the goods worth Rs. 5,69,024/- were supplied to the accused vide seven invoices and that the cheques in question were issued by the accused towards the legally enforceable debt arising therefrom, and the same was, in any manner, not successfully rebutted by the accused. 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.

5. Learned APP Mr. Yuvraj Brahmbhatt for the respondent State and learned advocate Mr. S.C. Sharma for

the respondent nos. 2 and 3 have jointly 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.

6. Considering the arguments of the learned advocates for the respective parties 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.

7. 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. Rule is made absolute.

(S. V. PINTO,J)

VASIM S. SAIYED

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 29/10/2026 17:14:20