

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION - NEGOTIABLE INSTRUMENT ACT) NO. 757 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Approved for Reporting	Yes	No
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THAKOR USHABEN KANUJI

Versus

STATE OF GUJARAT & ANR.

Appearance:

MR KAMLESH S KOTAI(6150) for the Applicant(s) No. 1

MR SURAJ B MATIEDA(10499) for the Respondent(s) No. 2

MR ROHAN RAVAL, APP for the Respondent(s) No. 1

CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 17/04/2026

JUDGMENT

RULE. Learned APP and learned advocate Mr. Suraj Matieda waive service of notice of Rule for and on behalf of respective respondents.

[1.0] Considering the issue involved in the present application and with consent of the learned advocates appearing for the respective parties as well as considering the fact that the dispute amongst the applicant and original complainant has been resolved amicably, this application is taken up for final disposal forthwith as alleged offence is bailable and compoundable.

[2.0] By way of this application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (For short "CrPC"), the

applicant has prayed for quashing and setting aside the judgment dated 04.10.2021 passed by the learned 2nd Additional Sessions Judge, Mehsana in Criminal Appeal No.77/2019 as well as the order dated 09.04.2019 passed by the learned Additional Judicial Magistrate, Mehsana in Criminal Case No.6358/2017, whereby the learned Magistrate has been pleased to hold the applicant guilty for the offence punishable under Section 138 of Negotiable Instruments Act, 1881 (for short "NI Act") and sentenced to undergo SI of three months and also directed to pay fine of Rs.5000/- and in default of payment of fine, to undergo further simple imprisonment for one month. The said order was assailed before the learned 2nd Additional Sessions Judge, Mehsana by way of Criminal Appeal No.77 of 2019, which came to be dismissed vide impugned Judgment and order dated 04.10.2021 and the order of conviction and sentence has been confirmed and upheld by the concerned Additional Sessions Judge. Hence, this Revision Application is filed.

[3.0] Learned advocate for the applicant has taken this Court through the factual matrix arising out of the present application. At the outset, it is submitted that the parties have amicably resolved the issue. It is further submitted that in view of the fact that the dispute is resolved, present application deserves consideration.

[4.0] Learned Additional Public Prosecutor appearing for the State has opposed the present application and submitted that considering the seriousness of the offence, present application may be rejected.

[5.0] Learned advocate for original complainant has reiterated the contentions raised by the learned advocate for the applicant and also submitted that the original complainant has filed an affidavit stating

therein that the complainant has received the entire cheque amount and she has settled the dispute with the applicant. The original complainant as well as the present applicant have personally remained present and are identified by learned advocates appearing for the respective parties. On inquiry made by the Court, original complainant has declared before this Court that the dispute between the applicant and the original complainant is resolved and cheque amount has already been paid by the applicant – original accused and therefore, now the grievance stands redressed. It is therefore submitted that the present application may be allowed.

[6.0] At the outset, learned advocates for the respective parties have jointly submitted that matter is settled and now the original complainant does not want to pursue further the litigation as complainant and applicant have settled the matter. Even complainant has remained present before this Court and stated that he has no objection if the conviction recorded by the learned Trial Court as well as Appellate Court is set aside. The learned advocate for the original complainant upon instructions has also stated that the original complainant do not have any objection if the amount deposited by the applicant – accused before the learned trial Court or appellate Court is returned back to the applicant – accused.

[7.0] Considering the fact that the dispute is settled between the parties and the applicant has paid the entire cheque amount and said fact having been confirmed by the complainant, as the offence is compoundable one at any stage under Section 147 of the NI Act. But, as accused has settled the dispute at belated stage before this Court, in view of the decision rendered in the case of **Damodar S. Prabhu Vs. Sayed Babalal H, reported in 2010(5) SCC 663**, accused is required to

be saddled with cost and as the accused has already made the payment/deposited the impugned amount, in view of the judgment of the Hon'ble Supreme Court in the case of ***Sanjabij Tari Vs Kishore S. Borcar, Neutral Citation 2025 INSC 1158***, maintaining the conviction this Court is inclined to extend the benefit under the Probation of Offenders Act, 1958, to the applicant-accused.

[8.0] Resultantly, this revision application is allowed. The order dated 09.04.2019 passed by the learned Additional Judicial Magistrate, Mehsana in Criminal Case No.6358/2017 as well as the judgment dated 04.10.2021 passed by the learned 2nd Additional Sessions Judge, Mehsana in Criminal Appeal No.77/2019 are hereby quashed and set aside with respect to the applicant subject to deposit of 7.5% of the amount of cheque before the Gujarat State Legal Services Authority.

[8.1] The Nazir, District Court, Mehsana is directed to return the amount towards 25% of the cheque amount deposited by the applicant – accused before the learned trial Court in compliance of the order passed by the learned appellate Court after due and proper verification. On compliance of the said order, if the applicant is behind the bars, he shall be released subject to deposit of aforesaid amount of cost, if his presence is no longer required in any other criminal offence.

[9.0] The present application is allowed qua applicant. Rule is made absolute to the aforesaid extent. Direct service is permitted. Record & Proceedings, if any, be sent back forthwith to the concerned Court. Rule is made absolute accordingly.

Sd/-
(HASMUKH D. SUTHAR, J.)

Ajay

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: AJAY CHANDRAN MENON(HC00939), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 17/04/2026 14:57:01