IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) NO. 17577 of 2026

In F/CRIMINAL APPEAL/32996/2026

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CHIRAGBHAI DIPAKBHAI BARAIYA
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MALAY S PATEL(8901) for the Applicant(s) No. 1
KARTIK H BHATT(9313) for the Respondent(s) No. 2
MR SHRIANG M MASHRUWALA(12224) for the Respondent(s) No. 2
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

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 30.06.2026 passed by the learned 3rd Additional Sessions Judge, Bhavnagar at Mahuva in Criminal Appeal no. 34/2025, 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. Malay Patel for the applicant,

learned APP Mr. Yuvraj Brahmbhatt for the respondent State and learned advocate Mr. Kartik Bhatt for the respondent no. 2.

4. Learned advocate Mr. Malay Patel for the applicant submits that the applicant and the respondent no. 2 were known to each other and were friends and the respondent no. 2 wanted some financial assistance and the applicant had advanced an amount of Rs. 8,50,000/- as a hand loan to the respondent no. 2. Towards the outstanding amount, the respondent no. 2 had issued cheque no. 000032 dated 23.08.2021 for Rs. 8,50,000/- from his account with HDFC Bank, Mahuva Branch. The cheque was deposited by the applicant in his account but the cheque returned unpaid with an endorsement “Funds Insufficient”. The demand statutory notice was given which was duly served but the respondent no. 2 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, Bhavnagar at Mahuva which came to be registered as Criminal Case No. 3150/2021. The respondent no. 2 was duly served with the summons and he appeared before the learned Trial Court and after his plea was recorded at Exh. 9, the applicant stepped into the witness box and deposed on oath at Exh. 4 and produced 6 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. 2 was recorded, wherein, the respondent no. 2 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 16.07.2025, was pleased to find the respondent no. 2 guilty for the offence under Section 138 of the NI Act and sentenced the respondent no. 2 to simple imprisonment for one year and was further pleased to order the respondent no. 2 to pay double the amount of cheque i.e. Rs. 17,00,000/- to the respondent no. 2 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 respondent no. 2 filed Criminal Appeal no. 34/2025 before the Sessions Court, Bhavnagar and after the arguments for both the parties were heard, the learned 3rd Additional Sessions Judge, Bhavnagar at Mahuva by the impugned judgement and order dated 30.06.2026, was pleased to set aside the judgement and order of conviction and acquit the respondent no. 2 from the offence under Section 138 of the NI Act. Learned advocate submits that

the learned 3rd Additional Sessions Judge, Bhavnagar at Mahuva 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. 2 up to the extent of preponderance of probability but in fact, the applicant had proved that the cheque was issued for the legally enforceable debt. 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. Kartik Bhatt for the respondent no. 2 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 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.

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 17:15:33