IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION - NEGOTIABLE INSTRUMENT ACT) NO. 2388 of 2026

With
R/CRIMINAL REVISION APPLICATION NO. 2408 of 2026

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SHREE SADGURU COTTON CO. THROUGH ITS PROPRIETOR NITINBHAI NARENDRABHAI RAJGURU

Versus

STATE OF GUJARAT & ANR.

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Appearance:
MR VISHAL K ANANDJIWALA(7798) for the Applicant(s) No. 1
MR ROHAN RAVAL APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE R. T. VACHHANI**

Date : 27/10/2026

COMMON ORAL ORDER

RULE. Learned APP waives service of notice of rule on behalf of the respondent No.1 – State.

2. Since the issue arising out of the captioned revision applications is similar and one, the facts stated in CR.RA No.2388 of 2026 are taking into consideration for deciding both theses revision applications.

3. By way of preferring the CR.RA No.2388 of 2026, the petitioner seeks to quash and set aside the order 21/07/2026 passed by the learned Additional Sessions Judge, Ahmedabad (Rural) in Criminal Appeal No. 353 of 2025 confirming the judgment and sentence passed by Ld. Magistrate, Ahmedabad (Rural) dated 04/09/2025 in Criminal Case No. 768 of 2017. Whilst CR.RA No.2408 of 2026 challenges the judgment

and order 21/07/2026 passed by the learned Additional Sessions Judge, Ahmedabad (Rural) in Criminal Appeal No. 354 of 2025 confirming the judgment and sentence passed by Ld. Magistrate, Ahmedabad (Rural) dated 04/09/2025 in Criminal Case No. 769 of 2017.

3.1 In furtherance of the above, by way of relief prayed for in terms of paragraph 4(c) of the application, the petitioner also prays that pending the revision application the order of sentence passed by the learned Courts below be stayed and the petitioner may be released on bail.

4. The brief facts of the case are that the respondent no.2 herein original complainant filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short “the NI Act”) alleging that the respondent no. 2 had sold and supplied goods to the petitioner due to business relations and he had demanded payment of Rs.15 lakhs from the petitioner against which even after multiple reminders, the petitioner did not pay any outstanding amount. Upon repeated requests by the respondent no.2, the petitioner issued a cheque bearing No.014796 dated 8/2/2013 drawn on Kankaria Maninagar Nagarik Sahakari Bank Ltd., for Rs.5.00 lakhs and assured the respondent no.2 that upon presentation, he would receive the amount. The respondent no.2 deposited the said cheque in his Bank on 18/2/2013 which came to be dishonoured and returned unpaid with an endorsement "Insufficient funds".

4.1 Respondent no.2 issued legal demand notice dated 18/3/2013 which was duly served upon the petitioner. Thereafter, the respondent

no.2 filed a complaint which came to be culminated into Criminal Case No.768 of 2017 before the learned Principal Senior Civil judge, Dhandhuka, Ahmedabad (Rural) wherein after recording the evidence and appreciation thereof, at the conclusion of the trial, the learned Magistrate convicted the petitioner for the offence under Section 138 of the Negotiable Instruments Act and under Section 255(2) of the Code of Criminal Procedure and sentenced him to undergo Simple Imprisonment for eighteen (18) months. The learned Magistrate further ordered to pay the amount one and half (1 ½) times of the cheque amount as fine and in default, to undergo S.I. for six months.

4.2 The petitioner unsuccessfully assailed Criminal Appeal No. 353 of 2025 before Learned Sessions Judge, Ahmedabad (Rural) wherein the learned Additional Sessions Judge, Ahmedabad (Rural) vide order dated 21/07/2026 confirmed the judgment and order of sentence of the learned Trial Court observing the very demeanour and conduct of the petitioner that petitioner did not remain present before the Court at the time of pronouncement of the judgment and order of sentence.

4.3 Aggrieved by the aforesaid order of dismissing the appeal on ***21/07/2026*** confirming the judgment and order of conviction and sentence, the captioned revision applications came to be filed on ***27/07/2026***.

5. Heard the learned Advocate appearing for the petitioner and learned APP for the respondent No.1-State.

6. Before dealing with the issue on hand, certain clinching and glaring facts as emerging from the record are required to be taken into consideration that though the present revision application has been filed on 27/07/2026, the petitioner has not taken any pain to get the hearing of the matter for suspension of the sentence and thereby to seek the protective order. To the contrary, the petitioner is satisfied by mere pendency of the revision applications. Thus, the very conduct and intention of the petitioner is self explanatory that the petitioner intends to linger / prolong the matter for one or the other reasons. To be noted that the petitioner has moved the revision on 27/07/2026 and remained indolent for these three months and it is only when the petitioner is constrained to surrender to serve the order of sentence passed by the learned Courts below, he had shown his readiness and willingness to deposit the remaining cheque amount instead of one and half times of the cheque amount as ordered by the learned Courts below.

7. Now, reverting back to the case on hand keeping in mind the aforesaid undisputed facts, it is pertinent to note that, at the time of filing of the appeal before the learned first appellate Court while suspending the execution and operation of the order of sentence passed by the learned Magisterial Court, the learned first appellate Court directed the petitioner to deposit 20% of the amount of fine / compensation awarded within a period of 60 days which order appears to have been unsuccessfully assailed by the petitioner by preferring CR.RA No.57 of 2026 before this Court wherein the co-ordinate Bench of this Court directed the petitioner to deposit 20% of the amount on or before 12/03/2026. Thus, as reflecting from the entire material, the alleged transactions appears to have been

taken place way back in the year 2017 and thereafter the said litigation stretches for inordinate period followed by different means initiated by the petitioner herein so as to avoid the legitimate payment to be made to the original complainant as directed by the learned Court concerned.

8. Be that as it may, on earlier occasion when the captioned revision applications were listed for hearing before the co-ordinate Bench of this Court, it is only on 13/10/2026 learned advocate for the petitioner submitted that since the petitioner had deposited 20% of the cheque amount and is now ready and willing to deposit the remaining cheque amount before the learned Trial Court, the learned trial Court concerned was directed to accept the same without insisting the personal presence of the petitioner and petitioner is directed to produce the receipt thereof so that the relief prayed for by the petitioner seeking suspension of the sentence can be determined in accordance with the law.

9. It is submitted by learned Advocate for the petitioner that the entire cheque amount has been deposited. However, considering the facts emerging from the record, it appears that though the petitioner was directed to pay the one and half (1 & 1/2) time of the cheque amount, instead thereof, the petitioner deposited only cheque amount and that too after a long period of nine years which is nothing but a sheer misuse of the legal process of the Court while adopting dilatory tactics by the petitioner. It would also appear that the petitioner had tried to exhaust all available remedy under the law so as to avoid the compliance of the order passed by the learned Courts below which itself shows the conduct of the petitioner which is nothing but to take undue advantage of the legal

process of the Court by indulging in unfair practice.

10. Learned Advocate for the petitioner to substantiate his argument has placed reliance upon the decision in case of ***Damodar S Prabhu vs. Sayed Babalal H. AIR [2010 SC 1907]*** mainly on account that in case of willingness of accused to pay in accordance with the guidelines enumerated in the above case, the Court may suggest to the parties to go for compounding. If for any reason, the financial institutions/complainant asks for payment other than the cheque amount or settlement of entire loan or other outstanding dues, then the Magistrate may suggest to the Accused to plead guilty and exercise the power under Section 255(2) and/or 255(3) of the Cr.P.C. or 278 of the BNSS, 2023 and/or give the benefit under the Probation of Offenders Act, 1958 to the Accused.

11. However, while equating the aforesaid proposition of law with the facts of the case on hand, apparently no such efforts appears to have been made by the petitioner during the interregnum period of nine years i.e. from the date of filing of the complaint i.e. in 2017 till the challenge is made by the petitioner by filing one or the another applications before the learned Courts below as well as before this Court and, lastly upto the filing the captioned revision applications. No such readiness and willingness has ever been expressed by the petitioner uptil filing of the captioned revision application and it is only at the time when the petitioner was directed to surrender before the jail authority, such proposal has been made which smacks not only doubt on the conduct of the petitioner; but also appears to be made with oblique purpose to absolve from surrendering before the Court concerned for execution of

the order of the sentence which has attained finality before the learned first appellate Court. It also borne out from the record that even no such efforts have been made during the pendency of the appeal before the learned first appellate Court right from filing of the appeal till the same has been dismissed which also speaks volume about the very conduct of the petitioner and thus the said conduct of the petitioner would ultimately dis-entitle the petitioner to grant the prayer for suspension of sentence.

12. While inviting attention of this Court to an order passed by the Hon'ble Apex Court in case of ***Sudhir Khaitan vs. State of Rajasthan & Ors., rendered in Special Leave Petition (Crl.) Nos.19025-19027 of 2025 dated 10/04/2026*** seeking to challenge that the revision petition and the application for suspension of sentence were not taken up for consideration on the ground that the petitioner had not surrendered, learned Advocate for the petitioner would submit that as per the said order, the matter has now been referred to the larger Bench and therefore, this Court may consider the same while insisting for surrender of the petitioner.

13. No doubt, the issue relates to surrender before hearing the application seeking suspension of sentence refers to the Larger Bench of the Hon'ble Apex Court, but that would not mean to say that such law is not binding. In case of ***Union Territory Of Ladakh & Ors. Versus Jammu And Kashmir National Conference & Anr. [2023 Livelaw (SC) 749],*** the Hon'ble Apex Court has held that merely because the leading judgment of the Court on the subject is either referred to a larger Bench or a revision petition relating thereto is pending that would not be the sole

ground for not considering the order under challenge and the proposition of law laid down in the order under challenge stands and held to be a good law and thus the submissions advanced by the learned Advocate for the petitioner that in view of the aforesaid decision on the issue of petitioner to surrender first should not be taken into consideration does not find much force as it has been held that High Courts will proceed to decide the matters on the basis of the law as it stands. Relevant observations made in paragraph No.35 is quoted herein under:

> *"35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v Pranay Sethi, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and*

circumstances of the case before it."

14. At this stage, it would be apt to note that this Court had an occasion to deal with such similar issue in the case of ***Girish Harsukhray Vasavada & Anr Versus Shankarlal Govindji Joshi & Anr [2025 GUJHC 60640]***. The issue on hand has been succinctly dealt with which has attained finality before the Hon'ble Apex Court. Relevant observations made in paragraph No.9 to 17 are quoted herein below.

> *"9. To deal with the aforesaid issue, at the outset, it is required to be noted that once accused having convicted and sentenced by the learned trial Court which has been affirmed by the learned first appellate Court, in view of provisions of Section 418 of the Code of Criminal Procedure, 1973 (Section 458 of the BNSS) which relates for execution of sentence of imprisonment, the accused concerned is required to be sent jail for execution of sentence and thus the learned first appellate Court becomes functus officio after pronouncement of the order of sentence. For ready reference, Section 418 of the Code is quoted hereunder:*
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> > *"**418. Execution of sentence of imprisonment.---** (1) Where the accused is sentenced to imprisonment for life or to imprisonment for a term in cases other than those provided for by section 413, the Court passing the sentence shall forthwith forward a warrant to the jail or other place in which he is, or is to be, confined, and, unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with the warrant;*
> >
> > *Provided that where the accused is sentenced to imprisonment till the rising of the Court, it shall not be necessary to prepare or forward a warrant to a jail and the accused may be confined in such place as the Court may direct.*
> >
> > *(2) Where the accused is not present in Court when he is sentenced to such imprisonment as is mentioned in Sub-Section (1), the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail or other place in which he is to be confined; and in such case, the sentence shall commence on the date of his arrest."*

Sub-section (2) of Section 418 of the Code clearly provides that if the accused is not present in the Court when he is sentenced to such imprisonment as mentioned in sub-section (1), the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail.

10. Now, coming to the facts of the present case, as is evident from the record and as recorded by the learned first appellate Court, the petitioners – accused were not present before the learned first appellate Court at the time of pronouncement of the sentence and thereafter, moved two different applications seeking to extend the benefit under the Probation of Offenders Act and further to stay the order of serving the sentence for a period of fifteen days and the learned first appellate Court rejected the application to grant benefit under the Probation of Offenders Act and allowed the application seeking stay against the order of sentence for a period of 15 days while releasing petitioners – accused on bail. Thus, the learned Sessions Judge concerned in absence of any statutory powers conferred upon him committed serious error of law and has not followed the mandate of Section 418(2) of the Code.

11. Now, insofar as the submissions made by the rival parties on facts of the case are concerned, one of the argument sought to be canvassed by the petitioners – accused that in absence of any specific charge qua offence under Section 409 r/w 120- B of the IPC, the petitioners-accused were convicted and sentenced and therefore, the said order becomes nonest order; it cannot find any force since as submitted on behalf of the respondent – State that due to bona-fide and typographical error, such mistake has been occurred which can be rectified by making an appropriate applications by either of the party before the court concerned. The petitioners – accused has raised such a contention before this Court as if it was not well within the knowledge of the petitioners –

accused. From the record, it appears that, after the pronouncement of the judgment by the learned first appellate Court; instead drawing the attention to rectify such bona-fide mistake, application seeking benefit under the Probation of Offenders Act as well as seeking extension of time to surrender and to stay the order of serving the sentence for a period of fifteen days have been moved and during the entire hearing of the said applications, learned Counsel representing the petitioner – accused of CR.RA No.1857 of 2025 herein was very well present; but nothing sort of any material appears to have been made to draw the attention of the learned first appellate Court to the said aspect and therefore, under the garb of making such submissions, the petitioners- accused would intend to seek such relief which cannot be granted by this Court. The petitioners – accused as well as the learned Counsel representing the petitioners – accused were very well aware about such bona-fide mistake; and it is for the petitioners – accused to move such application for rectification of such bona-fide which has not done in the present case during the interregnum period i.e. even after passing of 15 days' after pronouncement of the judgment by the learned first appellate Court till the filing of these revision applications, who otherwise claimed to be sufferer / affected party.

12. In context to the submissions made on behalf of the petitioner – accused of CR.RA No.1857 of 2025 that the petitioner is decorated with several medals pursuance to his services rendered during his tenure and therefore looking to this aspect, this Court may exercise the discretion in favour of the petitioner – accused cannot be examined at this stage, as the said aspect has nothing to do with the issue on hand. To the contrary, it would be appearing from the record that the petitioner – accused did not remain present before the learned first appellate Court at the time of pronouncement of judgment and gave an application for exemption, which came to be rejected by the learned Court concerned and later on, the application as noted herein above were

moved to extent the benefit under the Probation of Offenders Act and to stay the order of serving the sentence for a period of fifteen days. Thus, this itself speaks volume about the conduct and demeanor on the part of the petitioner – accused by marching over the legal process of the Court.

*13. While relying upon the decision of Madras High Court in case of **Easwaramurthy (supra)**, it is contended that pending revision application against the conviction and sentence, the accused need not require to surrender. There is no dispute to the said proposition; but the said observations are made in relation to the cases under Section 138 of NI Act and other compoundable offences where there is possibility of compounding the offences within a short period and therefore, the said ratio also would not come to the rescue of the petitioners-accused.*

*14. In context to the reliance placed upon the decision in case of **Sohan Lal (supra)**, it is sought to be contended that exemption application from surrendering came to be allowed by the Apex Court and therefore, accused may be also granted such relief. There is no dispute to the proposition also; but in the said case, the accused therein after exhausting all remedy of filing criminal appeal as well as revision moved the Apex Court. Whereas in the present case, neither the appeal is filed; nor the revision is dismissed and therefore, on the facts of the present case, the said ratio would not be made applicable.*

*15. Insofar as the decision of the Hon'ble Apex Court case of **Bihari Prasad Singh (supra)** pressed into service on behalf of the petitioners – accused that under the revisional powers under Section 401 of the Code, it is not the sine qua non to first surrender after pronouncement and confirmation of the sentence by the learned first appellate Court and only thereafter the bail can be granted by the High Court; cannot be applied to the facts of the present case as in the present case, the revision applications filed*

by the petitioners – accused are admitted and not dismissed. Whereas, in the case before the Hon'ble Apex Court the revision application was dismissed on the sole ground of accused having not surrendered. Thus, the said ratio also would not be made applicable to the facts of the present case.

16. It is not in dispute that to deal with the issue in the case of hand, the provisions of Section 397, 389 and 389(3) of the Code are provided for. However, subject to the conditions a Court convicting the accused to release the accused on bail and suspend the sentence in order to enable the convicted person to prefer an ***appeal****. As such, the same cannot be considered rather impliedly read that the Court can suspend the sentence in order to enable the accused to prefer the* ***revision application****. It is an admitted fact that in the facts of the present case learned first appellate court after pronouncement of sentence stayed its own order and granted 15 days' time to petitioner-accused to approach higher Courts by releasing him on bail. Thus, the powers exercised by the learned first appellate court extending time to surrender to enable the petitioners – accused to file revision application seems to be without any substance and powers so vested by the provisions contained in the Code. The sum and substance as amalgamated from the above discussions while equating with the proposition of law laid down by the Hon'ble Apex Court makes it crystal clear that so far as the release of accused on bail or to extend the time to surrender for filing revision application is concerned, there is no provision anywhere in the Code, which may enable the Court of appeal to suspend the sentence or to release the applicant – accused on bail solely on the ground that he intends to file a revision application before Higher Courts. The legislature has made specific provision as per sub-section (3) of Section 389 of the Code to release the accused on bail when he intends to prefer an appeal and as such there is no provision at all anywhere in the Code empowering the Court to release the accused on bail or suspend the sentence in case, he intends to file revision application*

the Court convicting the accused. Thus, in view of the aforesaid, it can be sum up that the legislature did not intend to confer any such power in such circumstances to the appellate Court to stay and / or suspend and to keep the order in abeyance or to extend the time to surrender to the accused so as to enable the accused to file revision application.

17. Resultantly, the reliefs granted by the learned first appellate Court does not have any legs to stand in the eyes of law as after disposing the appeal, the learned first appellate Court becomes functus officio and seized with any power to exercise post disposal of the appeal. However, by doing so as in the present case, the learned Sessions Judge concerned has indirectly tantamount by suspending the sentence and releasing the convicted accused on bail. At this stage, I may refer to the relevant observations made in case of ***Arvind Maneklal Bhagat (supra)*** *wherein in similar such circumstances, the co-ordinate Bench of this Court has made following observations in paragraph [4] while summing up the issue:*

> *"[4] I may mention here that I have found in some other cases also that the Judges of the Court of Session have given directions similar to the one given by the learned Addl. Session Judge in the present case. Such directions cannot be given by the Court of Session while dismissing the appeal The Court of Session cannot give any such time for surrendering. The moment the Sessions Court dismisses the appeal, it follows that the accused whose appeal has been dismissed has to surrender to serve out the sentence imposed upon him. It is only the High Court which can pass appropriate orders in this regard. Order accordingly."*

15. Thus, the sum and substance of the aforesaid detailed discussions made in the proceeding paragraphs would reveal that petitioner is using dilatory tactics by adopting one or the other mode and misusing the process of law at least for the period of nine years and when the petitioner

realized that due to the concurrent finding of the learned Courts below and after having exhausting all the remedies available under the law, now the petitioner is constrained to surrender in view of the proposition of law laid down in the aforesaid cases, the petitioner has come-forward with the proposal to deposit the cheque amount instead of one and half times of the cheque amount as ordered by the Courts below which also speaks volume on the conduct of the petitioner.

16. For the foregoing reasons, the prayer as sought for in terms of paragraph 4(c) seeking suspension of sentence is hereby rejected.

17. Registry is directed to communicate the copy of this order to the court concerned for necessary action in accordance with the law.

(R. T. VACHHANI, J)

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Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: MANISHKUMAR JYOTINDRA SOMPURA(HC00189), Principal Pvt. Secretary, at High Court of Gujarat on 29/10/2026 11:43:13