

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR LEAVE TO APPEAL) NO. 15757
of 2025****In F/CRIMINAL APPEAL NO. 30872 of 2025**

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HANSABEN VAJESANGBHAI MASANI
Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR S D MOGHARIYA(11273) for the Applicant(s) No. 1
MS. C.M. SHAH, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE S.V. PINTO**Date : 07/08/2025****ORAL ORDER**

1. The present application is filed by the applicant – original complainant seeking leave to file an appeal against the order dated 09.07.2025 passed by the learned Judicial Magistrate First Class, Sayla (hereinafter referred to as the “learned Trial Court”) in Criminal Case No. 494/2023, whereby the learned Trial Court has dismissed the Criminal Case for want of prosecution as the applicant did not remain present under the provisions of Section 256(3) of Cr.P.C. and the respondent no. 2 - original accused came to be acquitted from the offence under Section 138 of Negotiable Instrument Act, 1881 (hereinafter referred to “the NI Act” for short).

2. Heard learned advocate Mr. Dax Solanki for learned advocate Mr. S.D. Moghariya for the applicant and learned APP Ms. C.M. Shah for the respondent State.

3. Learned advocate Mr. Dax Solanki for the applicant submits that the applicant had given her house on rent to the respondent no. 2 and an amount of Rs. 2,14,000/- was outstanding to be taken as rent from the respondent no. 2. The respondent no. 2 had issued cheque no. 666904 dated 04.08.2023 for Rs. 2,14,000/-- from his account with State Bank of India, Sayla Branch. The cheque was deposited by the applicant in her account with State Bank of India, Sayla Branch but the cheque returned unpaid with the endorsement "Funds Insufficient". The demand statutory notice was given which was refused by the respondent no. 2 and the respondent no. 2 did not repay the amount within the stipulated period and hence, the applicant filed criminal complaint under Section 138 of the NI Act before the Court of Judicial Magistrate First Class, Sayla which came to be registered as Criminal Case No. 494/2023. Learned advocate submits that the applicant had filed her affidavit of

examination-in-chief at Exh. 4 and had submitted the entire documents vide a list at Exh. 3 and had given an application at Exh. 5 for exhibiting the documents. The learned Trial Court was pleased to consider the evidence and took cognizance of the offence and issued summons which was duly served to the respondent no. 2 but the respondent no. 2 did not appear and hence, bailable warrants were issued at the request of the learned advocate for the applicant. Even though, the bailable warrants were served, the respondent no. 2 did not appear and hence, non-bailable warrants were issued. Learned advocate submits that if the rojkaam is perused, the learned advocate for the applicant had remained present and had given applications for issuance of the necessary warrants. The respondent no. 2 was successful in avoiding service and the learned advocate for the applicant had also given an application for calling for the explanation of the warrants, as to why the warrants were not being returned, served or unserved. Learned advocate submits that without considering the same and even though learned advocate for

the applicant was present and had made innumerable efforts to get the bailable and non-bailable warrants served and has also taken the warrants by hand but the respondent no. 2 was successful in avoiding service and on 09.07.2025, even though the learned advocate for the applicant was present and the entire evidence of the applicant was on record, the learned Trial Court was pleased to pass the impugned order below Exh. 1 and dismissed the complaint for want of prosecution. Learned advocate submits that the applicant has a good case on merits hence, has urged this Court to allow the application seeking leave to appeal.

4. Learned APP Ms. C.M. Shah for the respondent State has submitted that the learned Trial Court has considered the absence of the applicant and has passed the impugned order of acquittal but considering the copy of the rojkaam, necessary orders may be passed.

5. Considering the submissions of learned advocate for the applicant as also on perusal of the rojkaam produced on

record, prima facie, it appears that the documents have not been properly appreciated in proper perspective. 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 seeking leave to appeal is granted and disposed off accordingly.

VASIM S. SAIYED

(S. V. PINTO,J)