

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION -
NEGOTIABLE INSTRUMENT ACT) NO. 129 of 2024****With****CRIMINAL MISC.APPLICATION (REGULAR BAIL) NO. 1 of 2024
In R/CRIMINAL REVISION APPLICATION NO. 129 of 2024**

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PATHAN MURADKHAN SAHEBKHAN

Versus

ANILBHAI SHANKARBHAI VALAND

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Appearance:

MR SHAHRUKHKHAN A PATHAN(13404) for the Applicant(s) No. 1
for the Respondent(s) No. 1

MS JIRGA JHAVERI, APP for the Respondent(s) No. 2

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CORAM:HONOURABLE MS. JUSTICE S.V. PINTO**Date : 30/01/2024****ORAL ORDER**

1. Learned advocate Mr.Shubham B.Dave states that he has instructions to appear for the original complainant and he will file his vakilatnama during the course of the day. Registry to accept the same.
2. 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 for further litigation as the complainant has filed an affidavit in this regard duly sworn in on

12.1.2024.

3. With consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing as the matter is amicably settled between the parties and the offence is bailable and compoundable and nothing survives in the matter.
4. Rule. Learned APP Ms. Jirga Jhaveri waives service of notice of rule for the respondent – State and Mr.Dave waives service of notice of Rule for the respondent No.1.
5. By way of present revision application filed under Section 397 read with 401 of the Code of Criminal Procedure, the applicant has prayed for quashing and setting aside the impugned judgment and order dated 2.11.2023 passed by the learned 5th Additional Sessions Judge, Mehsana in Criminal Appeal No.64 of 2023, whereby the learned Additional Sessions Judge has confirmed the judgment and order dated 27.01.2023 passed by the learned Chief Metropolitan

Magistrate, Mehsana in Criminal Case No.4409 of 2021 whereby, the learned Magistrate has sentenced the applicant – original accused six months rigorous imprisonment for the offence punishable under Section 138 of the Negotiable Instrument Act and has also ordered the applicant to pay an amount of Rs.6,00,000/- to the complainant within a period of ninety days from the date of the order.

6. Being aggrieved, the applicant has preferred the present Criminal Revision Application.
7. Learned advocate Mr.Pathan for the applicant submits that the matter is amicably settled between the parties and if the amount deposited by the applicant is permitted to be withdrawn by the original complainant, the applicant has no objection to the same.
8. On the other-hand, learned advocate Mr.Shubham Dave for the original complainant submits that the matter is amicably settled between the parties. He submits that the complainant is present in the Court

and he has identified the complainant in the Court. He submits that the complainant has no objection, if the conviction recorded by the learned Trial Court as well as Appellate Court is set aside. He further submits that the applicant has no objection if the amount of cheque deposited by the applicant is permitted to be withdrawn by the respondent No.2 – original complainant.

9. On being inquired, the complainant, who is personally present in the court, has stated that the matter is amicably settled and he has no objection, if the impugned orders passed by the learned Courts below be quashed and set aside. The above statement made by the original complainant is reflected in Para-3 of the affidavit filed by the complainant.
10. Considering the fact that as under Section 147 of the Negotiable Instrument Act, the offence is compoundable and permissible to settle the dispute at any stage and therefore, permission to settle the

dispute is required to be allowed. It is pertinent to note that the applicant has settled the dispute at the level of High Court after the confirmation by the appellate Court and therefore, the present application requires consideration.

11. The learned advocates for the respective parties have jointly submitted that the matter is settled between the parties and the original complainant does not want to pursue further litigation. The original complainant has filed the affidavit and has admitted the contents of the affidavit. The complainant has remained present before this Court and has stated that he has no objection, if the conviction recorded by the learned Trial Court as well as Appellate Court is set aside. I have also considered the facts and circumstances arising out of the present application as also the decision passed in case of **Damodar S. Prabhu Vs. Sayed Babalal H**, reported in **(2010) 5 SCC 663**. It appears that further continuation of criminal proceedings in relation to the impugned proceeding against the applicant would be

unnecessary harassment to the applicant.

12. Considering the nature of dispute between the parties which is private in nature and it appears that the trial would be futile and further continuance of the proceedings would amount to abuse of process of law and hence, to secure the ends of justice, the orders under challenge are required to be quashed and set aside in exercise of powers conferred upon this Court.
13. Resultantly, this application is allowed. The impugned judgment and order dated 2.11.2023 passed by the learned 5th Additional Sessions Judge, Mehsana in Criminal Appeal No.64 of 2023, whereby the learned Additional Sessions Judge has confirmed the judgment and order dated 27.01.2023 passed by the learned Chief Metropolitan Magistrate, Mehsana in Criminal Case No.4409 of 2021 are hereby quashed and set aside subject to deposit 15% of the amount of cheque by the applicant before the Gujarat High Court Legal Services Committee within a period of one week from

today. The original complainant is permitted to withdraw the amount of Rs.1,10,000/- deposited by the applicant herein. Learned trial Court is directed to allow the original complainant to withdraw the said amount of Rs.1,10,000/- deposited by the applicant on due verification.

14. The present application is allowed. Rule is made absolute to the aforesaid extent. Direct service is permitted.
15. In view of the above, Criminal Misc. Application also stands disposed as not survived.

H.M. PATHAN

(S. V. PINTO,J)