

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION -
NEGOTIABLE INSTRUMENT ACT) NO. 127 of 2024**

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**PATEL PAVANKUMAR KANIYALAL
Versus
STATE OF GUJARAT**

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Appearance:
MR KAMLESH S KOTAI(6150) for the Applicant(s) No. 1
for the Respondent(s) No. 2
MS DIVYANGNA JHALA, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE S.V. PINTO

Date : 08/02/2024

ORAL ORDER

1. Learned advocate Ms.Shivami Brahmkhatriya states that she has instruction to appear for the original complainant and therefore, she may be permitted to file her appearance. Accordingly, she is permitted to file her appearance for the original complainant.

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 the affidavit in this regard and the same is taken

on record.

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. Divyangna Jhala waives service of notice of rule for the respondent – State and learned advocate Ms. Shivami Brahmkshatriya waives service of notice of Rule for the respondent No. 2.
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 03.01.2024 passed by the learned 3rd Additional Sessions Judge, Mehsana in Criminal Appeal No. 244 of 2022, whereby, the learned Additional Sessions Judge has confirmed the judgment and order dated 14.07.2022 passed by the learned 9th Additional

Judicial Magistrate, First Class, Mehsana in Criminal Case No.1326 of 2021 whereby, the learned 9th Additional Judicial Magistrate, First Class, Mehsana has sentenced the applicant – original accused one year simple imprisonment for the offence punishable under Section 138 of the Negotiable Instrument Act and has also ordered the applicant to pay compensation of Rs.4,00,000/- to the complainant.

6. Being aggrieved and dissatisfied by the judgment and order passed by the learned 9th Additional Judicial Magistrate, First Class, Mehsana, the present applicant filed Criminal Appeal No.244 of 2022 before the learned 3rd Additional Sessions Judge, Mehsana. The learned 3rd Additional Sessions Judge, Mehsana vide order dated 3.1.2024 confirmed the judgment and order passed by learned 9th Additional Judicial Magistrate, First Class, Mehsana and rejected the appeal. Hence, the applicant filed the present criminal revision application.

7. Learned advocate Mr.Kotai for the applicant submits that as the applicant had shown readiness and willingness to deposit the amount but, the said amount could not be deposited to the original complainant and hence, he was taken into custody. He further submits that the matter is amicably settled between the parties and the outstanding amount has been paid by the applicant to the original complainant. Mr.Kotai further submitted that financial condition of the applicant is very poor and that the applicant has taken Rs.4,00,000/- from the complainant for the payment of crop loan and therefore, considering the peculiar facts and circumstances of the case, 10% fine instead of 15% fine be imposed upon the applicant and the applicant is ready and willing to pay the fine at the rate of 10%.

9. Learned advocate Ms.Brahmkshatriya for the original complainant submits that the matter is amicably settled between the parties. She submits that the complainant is present in the Court and she has

identified the complainant. She submits that the complainant has no objection, if the conviction recorded by the learned Trial Court as well as Appellate Court is set aside. She further submits that the amount of cheque has already handed over by the applicant to him.

10. On being inquired, the complainant, who is personally present in the court, has submitted that the matter is amicably settled and the amount of cheque has already been handed over to him and he has no objection, if the impugned orders passed by the learned Courts below are quashed and set aside. The above statement made by the original complainant is reflected in Para-2 of the affidavit filed by the complainant.
11. 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.

12. 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.

13. Considering the nature of dispute between the parties which is private in nature, the matter requires consideration 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 order is required to be quashed and set aside in exercise of powers conferred upon this Court.
14. Resultantly, this application is allowed. The judgment and order dated 03.01.2024 passed by the learned 3rd Additional Sessions Judge, Mehsana in Criminal Appeal No. 244 of 2022 as well as the judgment and order dated 14.07.2022 passed by the learned 9th Additional Judicial Magistrate, First Class, Mehsana in Criminal Case No.1326 of 2021 are hereby quashed and set aside subject to deposit 10% of the amount of cheque considering the peculiar facts and circumstances of the case before the Gujarat High

Court Legal Services Committee within a period of four weeks from today.

15. On compliance of the said order, the applicant shall be released forthwith, if his presence is no longer required in any other criminal offence.
16. The present application is allowed. Rule is made absolute. Direct service is permitted.

(S. V. PINTO,J)

H.M. PATHAN