NEUTRAL CITATION
2026:GUJHC:20689

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION - NEGOTIABLE INSTRUMENT ACT) NO. 984 of 2016

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

==========

Approved for Reporting	Yes	No
		√

==========

RAJUBHAI KALIDAS CHUNARA
Versus
KANTIBHAI KALYANJIBHAI SHAH & ANR.

==========

Appearance:
MR RJ GOSWAMI(1102) for the Applicant(s) No. 1
NOTICE SERVED for the Applicant(s) No. 1
MR ANILKUMAR B LALCHETA(12088) for the Respondent(s) No. 1
MR JAINISH A LALCHETA(12079) for the Respondent(s) No. 1
MR ROHAN RAVAL, APP for the Respondent(s) No. 2

==========

CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Date : 18/03/2026

JUDGMENT

[1.0] By way of present revision application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short "CrPC"), the applicant has prayed for quashing and setting aside of the judgment and order dated 05.10.2016 rendered by learned Additional Sessions Judge, Vadodara in Criminal Appeal No.118/2016 and also the judgment and order dated 02.06.2016 recorded by the learned 11th Additional Senior Civil Judge and Additional Chief Judicial Magistrate, Vadodara in Criminal Case No.50812/2012.

[2.0] Heard learned advocate Mr. R.J. Goswami for the applicant, learned advocate Mr. Jainish Lalcheta for the respondent No.1 and

NEUTRAL CITATION
2026:GUJHC:20689

learned APP for respondent No.2 – State of Gujarat.

[3.0] It is the case of the applicant that the applicant was serving as Peon whereas complainant was serving as Professor in M.S. University, Technology Faculty and were known to each other since 1995 and to help the applicant – accused, the complainant had given him Rs.3,50,000/- to the applicant – accused during 2006 to 2010 as hand loan against which the applicant had issued cheques to the complainant. It is the case of the complainant that, on 04.04.2012, accused contacted the complainant and stated that he has arranged money and taking back cheques and accused has issued 2 cheques of UCO Bank, Dandia Bazar Branch, Vadodara of dated 24.07.2012, wherein cheque of Rs.1,50,000/- having No.736452 and of Rs.2,00,000/- having No.736453 of dated 27.04.2012 had been given to the complainant. That the accused has stated to deposit the cheques after Mango season, as accused was doing business of Mango. Afterwards complainant reminding the accused of the money and in that reference the accused in April, 2012 had paid Rs.5,000/- and in May, 2012 had paid Rs.7,000/- in cash. Afterwards complainant has reminding the accused in June, 2012 at that time accused has gave threat to suicide, therefore complainant shocked and in apprehension has filed an application before Police Commissioner, Vadodara. After the said application the accused has in Police statement stated that Rs.2,20,000/- is remained to be paid and that he has paid Rs.12,000/-, said statement is false and got up because the accused has admitted of Rs.3,50,000/- in April, 2012 and has issued cheques to the complainant. That afterwards the complainant has no option but to wait for date of cheques and on the date of cheques before 27.04.2012, the accused sent message to give 10 to 15 days and gave assurance that cheques will be honoured. That on relying upon the

NEUTRAL CITATION
2026:GUJHC:20689

assurance and promise of the accused the said cheques have been deposited by the complainant in his bank Dena Bank, R. V. Desai Road Branch, Vadodara on 11.08.2012, which were dishonoured on 13.08.2012 with endorsement "Funds Insufficient". Thereafter the complainant has issued Notice through RPAD on 22.08.2012 under N.I.Act, which has been duly served to the accused on 23.08.2012. But accused did not give any reply and there is legal debt and accused has committed offence under Section 138 of NI Act. Therefore, the complainant was constrained to file the complaint against the accused.

[3.1] The learned Magistrate convicted the present applicant for the offence under Section 138 of the NI Act and imposed punishment of three months' simple imprisonment upon the applicant and ordered the applicant to pay compensation of Rs.3,38,000/- and in default of payment of compensation, further simple imprisonment for one month was imposed. Being aggrieved and dissatisfied, the applicant preferred an appeal being Criminal Appeal No.118/2016 under Section 374 of the CrPC which was dismissed by the learned Additional Sessions Judge, Vadodara vide judgment and order dated dated 05.10.2016 upholding the judgment and order passed by the learned Magistrate. Hence, present applicant has filed the present revision application.

[4.0] Learned advocate Mr. R.J. Goswami appearing for the applicant has submitted that the respondent is a public servant who failed to inform to his superior to show any nature of transaction *qua* loan or expenditure and no income tax return or any document is produced on the record. The question does not arise to lend Rs.3.5 lakh. The notice (Exh.19) was issued by the complainant however, is not served to the

applicant – accused and RPAD (Exh.21) does not contain the signature of applicant. He has further submitted that though the defence was raised before the learned appellate Court, same has not been considered. He has also argued that the legal liability is also not proved. He has further submitted that blank cheques were issued towards security which were misused by the complainant. He has further argued that though the complainant himself in the complaint has admitted that though in April and May, 2012, Rs.5000/- and Rs.7000/- respectively were paid by the applicant to the complainant and is an admitted fact, both the Courts below have committed an error in convicting the applicant – accused since no any endorsement has been put *qua* the said part-payment. He has submitted that if the said amount of Rs.12,000/- (Rs.5000 + Rs.7000) is deducted, then the legally enforceable debt is not proved and the applicant is entitled to take statutory defence and benefit under Section 56 of the NI Act. He has also submitted that offence under Section 138 of the NI Act is not made out when the part payment is made. He has therefore, submitted that the present revision application be allowed.

[5.0] Learned advocate Mr. Jainish Lalcheta appearing for the respondent No.1 – original complainant and learned APP appearing for respondent No.2 – State have opposed the present revision application mainly on the ground that there are concurrent findings of fact and even otherwise the applicant – accused failed to rebut the statutory presumption. It is submitted that the applicant – accused availed hand loan and issued cheques towards repayment of hand loan amount which came to be dishonored due to insufficiency of funds pursuant to which statutory notice was issued and served upon the applicant however, no reply to the notice was given by the accused and considering the aforesaid fact, it is requested that revision

NEUTRAL CITATION
2026:GUJHC:20689

application be dismissed.

[6.0] Having heard learned advocates appearing for respective parties and perusing the record, it appears that the cheques in question are produced at Exh.16, return memo is produced at Exh.18, demand notice is produced at Exh.19, post acknowledgement slip is produced at Exh.20, closis purshis is produced at Exh.43 and further statement of accused under Section 313 of the CrPC was recorded wherein the applicant – accused pleaded not guilty. The applicant accused in his further statement has stated that the transaction took place in the year 1998 and in the cross-examination (Exh.9), the suggestion was put to the complainant that before filing the complaint, the accused had repaid the amount. Further, the statement of the accused shows that he had no knowledge as to in which year the cheques were issued and how many cheques were issued to the complainant and cheques of which bank were returned by the complainant to the applicant – accused. Further, he has also denied the receiving of notice and handover of the cheques. He has also submitted that he was doing the job with the complainant and he came in contact of the complainant and there was a relation of taking hand loan and he used to take hand loan since 1998 and at that time, complainant did not demand any interest but when accused has paid more amount then the complainant demanded 20% interest. Further, he has stated that complainant has misused the cheque and filed false complaint and he does not know as to how many cheques and of which bank cheques the complainant has returned to him. Perusing the said defence, *prima facie,* it appears that there was transaction of money between the complainant and accused. So far as issuance of statutory notice is concerned, if the notice is issued on the proper address, as mentioned in the notice, then the same is governed by

presumption under Section 27 of the General Clauses Act. In criminal case, criminal appeal and criminal revision application also, same address of the applicant – accused is mentioned and hence, is governed by presumption under Section 27 of the General Clauses Act. Learned trial Court has also dealt with the said contention in light of decision of Hon'ble Supreme Court in the case of C.C. Alavi Haji vs. Palapetty Muhammed & Anr. reported in 2007(2) GLH 512. Herein, mere denial is on record but failed to prove the fact that the notice was not served. Even if for the sake of argument it is accepted that notice was not received, but he has not disputed about the service of summons and after service of summons before the learned trial Court, failed to make good or deposit the amount of cheque or raised such defence and in light of section 138(b)(c) of the NI Act, failed to show the benefit. In view of above, argument canvassed by the learned advocate for the applicant – accused for non-service of notice is not accepted.

[6.1] Herein, admission of signature on the cheque is proved and is not in dispute and hence, is governed by presumption under Section 118 and 139 of the NI Act and is required to be rebutted by the accused by leading evidence for which it is always not necessary to prove by leading the evidence but is based on preponderance of probabilities also. Hence, in view of the law laid down by the Hon'ble Apex Court in the case of **Tedhi Singh v. Narayan Dass Mahant** reported in **(2022) 6 SCC 735** and **Kalamani Tex v. P. Balasubramanian**, reported in **(2021) 5 SCC 283**, wherein the effect of admission regarding the signature on the cheque is explained, once the signature is admitted, it is required to be presumed that the cheque was issued towards consideration for a legally enforceable debt. Further, once signature is accepted then cheques were issued

towards the security and it were signed. As per explanation of legal position on how to rebut the presumption under Section 139 of the NI Act and to raise the presumption under Section 139 of the NI Act, the Hon'ble Apex court has clearly explained in the case of **Rajesh Jain v. Ajay Singh** reported in **(2023) 10 SCC 148**.

[6.2] Herein, the cheques are returned due to insufficiency of funds for which legal notice was issued and thereafter the complaint is filed and cause of action and filing of complaint is not in dispute. The only dispute raised in light of section 56 of the NI Act is that no any endorsement being made though part-payment of Rs.12,000/- was made. Perusing the evidence, it appears that the complainant has denied the said fact and it appears that more than one transaction was found and the complainant and accused both were in contact with each other since 1995 to 1996 and it is an admitted position that money transactions between accused and complainant were there since 1998. The cheques for amount of Rs.1,50,000/- and Rs.2 lakh are produced at Exh.16 both of which came to be dishonored on 13.08.2012. If we peruse the averments made in para 2 of the complaint, amount of Rs.12,000/- (Rs.5000 in April, 2012 + Rs.7000 in May, 2012) is paid and the cheques are issued in the month of August, 2012 i.e. after four months. If we consider the provision of section 118 of the NI Act, instruments bear the signature and date on which it was drawn. Hence, same is governed by presumption and considering more than one transaction, when the cheques are issued subsequently on 13.08.2012, same is governed by presumption under Sections 118 and 139 of the NI Act, once signature is admitted. The fact that there were more than one transactions and though some amount was paid in April and May, 2012, the applicant – accused failed to prove that said amount was towards which instrument. Hence, no any evidence is

brought on record by the accused which reflects that the part-payment of the debt prior to presentation of cheques for encashment of cheques or liability being done. What the instruments in question reflect is that same were issued towards payment of Rs.3,50,000/- i.e. Rs.1,50,000/- and Rs.2,00,000/- however, nothing is on record to show that there was part-payment being made after issuance of notice or prior to the presentation of cheques. Hence, applicant – accused is not entitled to get the benefit of section 56 of the NI Act also and there is no need to make any endorsement under Section 15 of the NI Act or no requirement to record any part-payment as cheques are subsequently issued after the transactions of April and May, 2012. Hence, as on the date of issuance of cheques, there was a legally enforceable debt and sum of money was promised to be paid by the applicant – accused to the complainant. Hence, argument canvassed by the learned advocate for the applicant – accused is not accepted in light of the decision of Hon'ble Supreme Court in the case of **Dashrathbhai Trikambhai Patel vs Hitesh Mahendrabhai Patel** reported in **(2023)1 SCC 578.**

[6.3] The revisional jurisdiction can be exercised where there is a palpable error or non-compliance with the provision of law and where decision is completely erroneous and where the judicial discretion is exercised arbitrarily. Herein, if we examine the reasons assigned by the learned trial Court, it appears that learned trial Court has already appreciated the facts and finding of fact not to be upset unless it is found perverse and finding of fact not to be substituted keeping in mind the ratio of Hon'ble Supreme Court in the case of **Amit Kapoor vs. Ramesh Chander & Anr.** reported in **(2012)9 SCC 460** as no perversity is found in the reasons assigned by the learned trial Court. Both the Courts below have properly assigned reasons and given the

NEUTRAL CITATION
2026:GUJHC:20689

finding based on evidence led before it and hence also, no interference at the hands of this Court in exercise of revisional jurisdiction is required.

[6.4] It would be appropriate to refer to the decision of the Hon'ble Supreme Court in the case of **Malkeet Singh Gill vs. State of Chhatisgarh** reported in **(2022)8 SCC 204** wherein the Hon'ble Supreme Court held that section 397/401 CrPC vests jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction of law. There has to be well-founded error which is to be determined on the merits of individual case. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings. It is a settled legal proposition that if the Courts below have recorded the finding of fact, the question of re-appreciation of evidence by the revisional Court does not arise unless it is found to be totally perverse.

[7.0] In wake of aforesaid conspectus, present revision application fails and stands **dismissed**. Rule is hereby discharged. Interim relief granted earlier stands vacated forthwith. The applicant – accused to forthwith surrender before the learned trial Court to serve the remaining sentence, if any.

Sd/-
(HASMUKH D. SUTHAR, J.)

Ajay