

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL REVISION APPLICATION (AGAINST CONVICTION) NO. 715  
of 2024**

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HAMID JUSAB SUMRA  
Versus  
STATE OF GUJARAT & ANR.

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## Appearance:

ROMESH C NIVEN(9064) for the Applicant(s) No. 1  
MR A.N. PATHAN for the Respondent(s) No. 2  
MR JAY MEHTA APP for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 23/05/2024****ORAL ORDER**

1. Mr. A.N. Pathan, learned advocate submits that he has instruction to appear on behalf of respondent no.2 – original complainant.

Mr. Pathan is permitted to file vakalatnama on behalf of respondent no.2 – original complainant.

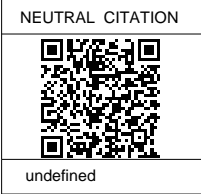
2. **Rule.** Learned advocates waive service of notice of Rule on behalf of respective respondents. Rule is fixed forthwith.

3. The present application has been filed under Section 397 read with Section 401 of the



Cr.P.C. challenging the order of conviction dated 05.08.2022 passed by the learned Additional Chief Judicial Magistrate, Mandvi - Kachchh in Criminal Case No.331 of 2018 so also the order dated 23.04.2024 passed by the learned Sessions Judge, Kachchh at Bhuj in Criminal Appeal No.58 of 2022 confirming the conviction imposed by the learned Chief Judicial Magistrate, Mandvi - Kachchh, upon the applicant.

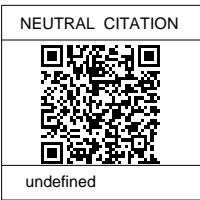
4. The case, in brief, is that the complainant had given money to the applicant as loan on assurance that he would pay the amount within one month and written undertaking in this respect was also made before the Notary, as per which the applicant was to pay the full amount on 28.02.2018. On 11.03.2018, the accused gave a cheque and upon deposit of the cheque, the same was dishonoured with endorsement as "fund insufficient", therefore, complainant sent a legal notice on 11.04.2018 to the applicant, but



the same was in vain, and hence the complaint came to be filed against the applicant.

5. Learned advocate Mr. A.N.Pathan places on record the affidavit of Respondent No.2 – original complainant confirming that settlement between the parties has been arrived at and he has received the amount of Rs.4,50,000/- and rest of the amount was assured to be paid by transferring his property by way of registered sale deed in the name of the complainant within a period of four weeks after getting released from the custody. The complainant further states that complainant has no objection if the present application is allowed.

6. Heard learned advocates for the parties and perused the papers on record. The affidavit of the respondent No.2 – original complainant dated 23.05.2024, who is present before the Court and identified by learned advocate Mr. A.N.



Pathan, tendered by the learned advocate for the complainant is taken on record. The complainant has affirmed that the amount of Rs.4,50,000/- has been received by him by way of cash and rest of the amount was assured to be paid by transferring his property by way of registered sale deed in the name of the complainant within a period of four weeks after getting released from the custody. The complainant, therefore, affirmed that he would not desirous to continue with further proceedings, as the dispute is amicably settled between them and, hence, gave his consent for quashment of both the impugned orders.

7. Since amount of Rs.4,50,000/- has been received by the complainant and as assured, for remaining amount, the applicant after release would transfer his property in the name of the complainant, and the complainant has given consent for compounding the offence, keeping in mind the object of Section 147 of the NI Act,



which is an enabling provision which provides for compounding the offence and may require the consent of the aggrieved for compounding the offence, however, the specific provision under Section 147, inserted by way of amendment towards special law, would give overriding effect to subsection (1) of Section 320 Criminal Procedure Code, 1973 (CrPC) as has been observed in the case of **Damodar S. Prabhu v. Sayed Baba Lal**, AIR 2010 SC 1907. Accordingly, as the dispute has been resolved, in consonance with the object of the N.I. Act and the provisions under Section 147 thereof, the matter is considered as compounded.

8. In case of *Damodar S. Prabhu v. Sayed Baba Lal* (supra), the Hon'ble Supreme Court has framed guidelines for paying cost before the Legal Services Authorities for unduly delayed of payment.

8.1 In view of the above, as the learned



advocate for the applicant has stated at bar and as affirmed by the complainant in his affidavit dated 23.05.2024 that for remaining amount, the applicant would transfer his property in the name of the complainant, it is directed that a sum of Rs.25,000/- be paid before the Legal Services Authority, High Court of Gujarat as cost within four weeks from the date of receipt of copy of this order.

9. In aforesaid view of the matter, and in view of the above statement made by the learned advocate Mr. Pathan for Respondent No.2 and in view of the affidavit of Respondent No.2 – original complainant, who confirms that the parties have arrived at settlement, the judgment and order passed by the learned Trial Court of conviction and sentence for the offence punishable under Section 138 of the NI Act, as affirmed by the learned Appellate Court, are quashed and set aside on condition that the cost



of Rs.25,000/- be paid before the Legal Services Authority, High Court of Gujarat within four weeks from the date of receipt of copy of this order. The applicant stands acquitted and be released forthwith.

10. The application stands disposed of. Rule is made absolute. Direct service is permitted.

Pankaj

**(PRANAV TRIVEDI,J)**