IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 6228 of 2017

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VARANG KRISHNAKANT THAKER

Versus

STATE OF GUJARAT & ANR.

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Appearance:
MR.PRASHANT B SHARMA(7028) for the Applicant(s) No. 1
MR SOHAM JOSHI, APP for the Respondent(s) No. 1
RULE SERVED BY DS for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 25/08/2025

ORAL ORDER

Though served, none appears for the respondent No.2.

1. By way of this petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") as well as under Article 227 of the Constitution of India, the petitioner has prayed for quashing and setting aside the proceedings of Criminal Case No.3532 of 2016 filed u/s 138 of the NI Act pending before the learned CJM, Ahmedabad Rural

2. Facts of the case are as under :-

2.1. Petitioner father approached to India from US alone by Doing Journey alone to Ahmedabad. With Consulting to Dr. Apurva Parekh petitioner took his father to respondent no.2 hospital for Dayalisis.

2.2 Petitioners father complained for generalized weakness and loss of appetite chills with rigors therefore again consulting to the Dr. Apurva Parekh, father of the petitioner again admitted in respondent no.2 Hospital.

2.2 Petitioner's father due to the negligence of Doctors and hospital Staff, Fistula in the left hand of the petitioners father was infected during the process of dialysis and pus infected the blood due to which, infection caused in the lungs and intestine.

2.3 Petitioner shifted his father to Sardar Patel Hospital, where the operation was done and petitioner,s father's 2 feet intestine was removed due to infection.

2.4 Petitioner was given the Final bill of Rs 4,45,909/- out of which, during the period between 22-01-2017 till 4-02-2017, petitioner made payment 1,45,000/- at regular intervals and gave the cheque No. 000096 amounting to Rs.3,00,909/- to the respondent no.2. hospital for the final payment.

2.5 Petitioner sent advance notice to the respondent no.2 hospital that he has to take legal action against the respondent no.2 hospital and therefore, stopped payment by regd. post AD and same was received by the Resp. No.2 hospital on 12-04-2016, Cheque no. 000096 was deposited by the respondent no.2 hospital was returned due to stopped payment and not due to Insufficient funds.

2.6 Hence, Notice under section 138 of N.I Act was issued by the the respondent No.2 and same was refused and no reply was

given by the petitioner to the respondent no.2 hospital.

2.7 Therefore, respondent no.2 hospital filed the criminal case no. 3532/2016 before the Rural Court Ahmedabad Chief Judical Magistrate Court No.16 2nd Addition Civil Judge & A.C.J.M.

2.8 Hence, present petition is filed to quash the proceedings of Criminal Case No.3532 of 2016.

3. Learned advocate for the petitioner would submit that the cheque in question was given to the respondent No.2 hospital towards payment to the hospital. However, due to negligency on the part of the respondent Hospital, the father of the petitioner has to suffer a lot. He would further submit that since there was clear negligency on the part of the respondent Hospital in treating the father of the petitioner, the petitioner has stopped payment of cheque, which was given to the Hospital towards payment for treatment of father of the petitioner. He would further submit that the complaint contains reason of insufficient funds for return of the cheque in question and since there is no legally enforceable debt existed on the date when the cheque in question was honoured, the petitioner may not liable to face the trial of criminal proceedings. Upon above submission, learned advocate for the petitioner prays to allow this petition.

4. Per contra, learned APP referring to judgment in case of Sunil Todi and others Vs. State of Gujarat, 2022(16) SCC 762, particularly, para 30 to 34 and in case of Rathish Babu Unnikrishnan v. State (Govt. of NCT of Delhi) and Another, 2022 SCC OnLine SC 513, more particularly, para 8.13 and 16 to 19

would submit that whether the cheque in question is issued towards security, whether there is subsisting liability and the cheque in question was issued towards subsisting liability, all are the questions of fact and cannot be a reason to quash criminal complaint without weighing them in evidence. He would further submit that the Court should slow in quashing the complaint where disputed questions of facts are to be weighed under the scale of the Evidence Act. He would further submit that section 139 of the NI Act operates presumption against accused that the cheque in question has been given towards legally enforceable liability. The accused however got chance to rebut the presumption by leading evidence, but not by adjudicating the case u/s 482 of the Code. Therefore, he would submit that the petitioner has also accepted that the cheque is returned unpaid as payment was stopped, prima facie, ingredients of section 138 of the NI Act are attracted and therefore, the learned trial Court has rightly issued process to the petitioners. Upon such submission, learned APP requests to dismiss the petition.

5. Regard being had to the rival submissions of learned advocates for both the sides and giving anxious thoughts and consideration in contrast to the pleadings and documents on record, at the outset, what appears that while exercising jurisdiction u/s 482 of the Code, the Court cannot hold mini trial and appreciate the evidence. [See: Dharambeer Kumar Singh v. State of Jharkhand, (2025) 1 SCC 392 as well as in case of CBI v. Aryan Singh, (2023) 18 SCC 399]. The relevant para from the judgment reads as under:-

> *"17. This Court, in a series of judgments, has held that while exercising inherent jurisdiction under Section 482 of the Criminal Procedure Code, 1973, the High Court is not supposed to hold a mini-trial. A profitable reference can be made to the judgment in CBI v. Aryan Singh [CBI v. Aryan Singh, (2023) 18 SCC 399: 2023 SCC OnLine SC 379]. The relevant paragraph from the judgment is extracted hereunder: (SCC paras 6-7)*
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> > *6. ... As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482CrPC, the Court is not required to conduct the mini-trial. ...*
> > *7. ... At the stage of discharge and/or while exercising the powers under Section 482CrPC, the Court has very limited jurisdiction and is required to consider 'whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not'."*

6. In case of **Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd, (2016) 10 SCC 458**, Paras 14, 13, and 16 reads as under:-

> *"13. In Balaji Seafoods (supra), the High Court noted that the cheque was not handed over with the intention of discharging the subsisting liability or debt. There is, thus, no similarity in the facts of that case simply because in that case also loan was advanced. It was noticed specifically therein – as was the admitted case of the parties – that the cheque was issued as "security" for the advance and was not intended to be in discharge of the liability, as in the present case.*
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> *14. In HMT Watches Ltd. versus M.A. Abida[8], relied upon on behalf of the respondent, this Court dealt with the contention that the proceedings under Section 138 were liable to be quashed as the cheques were given as "security" as per defence of the accused. Negativing the*

contention, this Court held :-

> *"10. Having heard the learned counsel for the parties, we are of the view that the accused (Respondent 1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under Section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties. The High Court further erred in observing that Section 138(b) of the NI Act stood uncomplied with, even though Respondent 1 (accused) had admitted that he replied to the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorised by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it.*
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> *11. In Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd.[(2008) 13 SCC 678], this Court has made the following observations explaining the parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure: (SCC pp. 685-87, paras 17 & 22)*
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> > *"17. The parameters of jurisdiction of the High Court in exercising its jurisdiction under Section 482 of the Code of Criminal Procedure is now well settled. Although it is of wide*

amplitude, a great deal of caution is also required in its exercise. What is required is application of the well-known legal principles involved in the matter.

22. Ordinarily, a defence of an accused although appears to be plausible should not be taken into consideration for exercise of the said jurisdiction. Yet again, the High Court at that stage would not ordinarily enter into a disputed question of fact. It, however, does not mean that documents of unimpeachable character should not be taken into consideration at any cost for the purpose of finding out as to whether continuance of the criminal proceedings would amount to an abuse of process of court or that the complaint petition is filed for causing mere harassment to the accused. While we are not oblivious of the fact that although a large number of disputes should ordinarily be determined only by the civil courts, but criminal cases are filed only for achieving the ultimate goal, namely, to force the accused to pay the amount due to the complainant immediately. The courts on the one hand should not encourage such a practice; but, on the other, cannot also travel beyond its jurisdiction to interfere with the proceeding which is otherwise genuine. The courts cannot also lose sight of the fact that in certain matters, both civil proceedings and criminal proceedings would be maintainable."

12. In Rallis India Ltd. v. Poduru Vidya Bhushan [(2011) 13 SCC 88], this Court expressed its views on this point as under: (SCC p. 93, para 12)

"12. At the threshold, the High Court should not have interfered with the cognizance of the complaints having been taken by the trial court. The High Court could not have discharged the respondents of the said liability at the threshold. Unless the parties are given opportunity to lead evidence, it is not possible to come to a definite conclusion as to what was the date when the earlier partnership was dissolved and since

what date the respondents ceased to be the partners of the firm."

7. In the recent judgment rendered in the case of **Rathish Babu Unnikrishnan (supra)**, the Hon'ble Supreme Court, while referring to the ratio laid down in **Rajeshbhai Muljibhai Patel v. State of Gujarat, (2020) 3 SCC 794**, has categorically held that disputed questions of fact are not required to be adjudicated at the threshold stage. Instead, such issues ought to be considered and decided only after the parties have had the opportunity to lead evidence. The relevant paragraphs of the judgment are reproduced hereinbelow:-

"12. At any rate, whenever facts are disputed the truth should be allowed to emerge by weighing the evidence. On this aspect, we may benefit by referring to the ratio in Rajeshbhai Muljibhai Patel vs. State of Gujarat5 where the following pertinent opinion was given by Justice R. Banumathi: -

"22. ..... When disputed questions of facts are involved which need to be adjudicated after the parties adduce evidence, the complaint under Section 138 of the NI Act ought not to have been quashed by the High Court by taking recourse to Section 482 CrPC. Though, the Court has the power to quash the criminal complaint filed under Section 138 of the NI Act on the legal issues like limitation, etc. criminal complaint filed under Section 138 of the NI Act against Yogeshbhai ought not to have been quashed (2010) 11 SCC 441 5 (2020) 3 SCC 794 merely on the ground that there are inter se disputes between Appellant 3 and Respondent 2. Without keeping in view the statutory presumption raised under Section 139 of the NI Act, the High Court, in our view, committed a serious error in quashing the criminal complaint in CC No. 367 of 2016 filed under Section 138 of the NI Act."

13. Bearing in mind the principles for exercise of jurisdiction in a proceeding for quashing, let us now turn to the materials in this case. On careful reading of the complaint and the order passed by the Magistrate, what is discernible is that a possible view is taken that the cheques drawn were, in discharge of a debt for purchase of shares. In any case, when there is legal presumption, it would not be judicious for the quashing Court to carry out a detailed enquiry on the facts alleged, without first permitting the trial Court to evaluate the evidence of the parties. The quashing Court should not take upon itself, the burden of separating the wheat from the chaff where facts are contested. To say it differently, the quashing proceedings must not become an expedition into the merits of factual dispute, so as to conclusively vindicate either the complainant or the defence.

14. The parameters for invoking the inherent jurisdiction of the Court to quash the criminal proceedings under S.482 CrPC, have been spelled out by Justice S. Ratnavel Pandian for the two judges' bench in State of Haryana v. Bhajan Lal6, and the suggested precautionary principles serve as good law even today, for invocation of power under Section 482 of the Cr.P.C.

> *"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."*

15. In the impugned judgment, the learned Judge had rightly relied upon the opinion of Justice J.S.Khehar for a Division Bench in Rajiv Thapar (supra), which succinctly express the following relevant parameters to be considered by the quashing Court, at the stage of issuing process, committal, or framing of charges,

"28. The High Court, in exercise of its jurisdiction under Section 482 CrPC, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/ complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/ complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same."

16. The proposition of law as set out above makes it abundantly clear that the Court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an unimpeachable quality, so as to altogether disprove the allegations made in the complaint.

17. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e., the trial Court is ousted from weighing the material evidence. If this is allowed, the accused may be given an un-merited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due

> *opportunity to adduce defence evidence during the trial, to rebut the presumption.*
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> *18. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial Court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited."*

8. Therefore, applying the ratio laid down in the aforesaid judgments to the facts of the present case, the petitioner accused cannot contend at this juncture that the cheque in question was not returned with remarks "insufficient funds", but because the petitioner has stopped payment because of negligency on the part of the respondents Hospital in treating his father and hence, the case u/s 138 of the NI Act is not made out. This contention is disputed facts and can be addressed and weighed during trial. To be noted that once the process is issued, presumption u/s 139 of the NI Act starts operating in favour of the complainant and as such, the accused is required to discharge burden by leading evidence. The complaint cannot be quashed until the accused discharges burden envisaged upon.

9. Considering the application of ratio of above judgments, the judgment cited by learned advocate for the petitioners renders no help to his case.

10. In view of above and for the foregoing reasons, the

contention of the petitioners to quash the complaint does not hold the field and the same can at the most be a good defence and can be raised during trial, but upon such finding, the Court cannot quash the complaint.

11. Resultantly, the petition fails and stands dismissed. Rule discharged. Interim relief granted earlier stands vacated.

(J. C. DOSHI,J)

SHEKHAR P. BARVE

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SHEKHAR PRAFULBHAI BARVE(HC00200), Principal Pvt. Secretary, at High Court of Gujarat on 25/08/2025 17:09:34