

Reserved On : 24/03/2026

Pronounced On : 13/04/2026

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 7429 of 2017****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE J. L. ODEDRA**

Approved for Reporting	Yes	No
		✓

K.S. &amp; CO. THROUGH SAKABHAI @ SANKABHAI PRABHATBHAI DESAI

Versus

STATE OF GUJARAT &amp; ANR.

Appearance:

MR PRATIK Y JASANI(5325) for the Applicant(s) No. 1

HCLS COMMITTEE(4998) for the Respondent(s) No. 2

MR. MANOJ T DANAK(6264) for the Respondent(s) No. 2

PUBLIC PROSECUTOR for the Respondent(s) No. 1

**CORAM:HONOURABLE MR.JUSTICE J. L. ODEDRA****CAV JUDGMENT**

1 Aggrieved by the order passed below Application Exh.68 and 80, the petitioner (original complainant) has preferred the present Special Criminal Application praying for the following reliefs:

*“8. The petitioner therefore prays that:-*

*(A) YOUR LORDSHIPS be pleased to issue an*

*appropriate writ, order or direction quashing and setting aside the order dated 27.10.2016 passed below Exh.68 as well as the order dated 29.05.2017 passed below Exh.80 in Criminal Case No.3098 of 2013;*

*(B) Pending admission, hearing and final disposal of this petition, **YOUR LORDSHIPS** be pleased to stay operation, execution and implementation of the order dated 27.10.2016 passed below Exh.68 as well as the order dated 29.05.2017 passed below Exh.80 in Criminal Case No.3098 of 2013;*

*(C) **YOUR LORDSHIPS** be pleased to grant such other and further relief(s) in favour the petitioner as may be deemed fit in the interest of justice.”*

2 The facts relevant for the present matter so far as necessary to decide the controversy at hand, being in a narrow compass, are enumerated as follows:

2.1 It appears that on 26.03.2010, under a loan agreement, the appellant (original complainant) had advanced a sum of Rs.2,50,000/- to the respondent No.2 (accused) herein, purportedly to enlarge the scope of the business of respondent No.2, consequent to the respondent No.2 having purchased a vehicle (Bus, bearing registration No.GJ-14-T-211). It appears that some of the installments under the said loan agreement were paid by respondent no.2. However, subsequently, the accused defaulted in payment of the said residual installments. It is alleged that

the complainant produced a Cheque for the residual amount including the interest being Cheque No.239784 dated 02.04.2013 for an amount of Rs.2,05,000/-. On presentation of the said cheque, the said cheque came to be dishonoured for the reason of ‘insufficient funds’ and hence, after following requisite statutory provisions, the appellant/complainant preferred criminal complaint No.3098 of 2013.

2.2 In the said Criminal Complaint proceedings, by way of Exh.16, the complainant had filed affidavit of examination-in-chief. Subsequently, the cross-examination ensued thereunder. Thereafter, in view of certain admissions, application Exh.68 came to be preferred by the learned advocate for the Respondent No.2(accused), whereunder the impugned orders calling upon the appellant to produce his income-tax returns for the year 2010-11,2011-12, 2012-13 came to be passed, thereby disposing the said application Exhibit 68.

2.3 An application for reviewing the said order below Application Exh.68 was preferred by the applicant, which too, came to be rejected by the Court.

3 Learned advocate for the petitioner submitted that as

such, all the necessary and requisite documents pertaining to the transaction at hand, namely, the loan agreement under which the loan was negotiated, the details of the cheque through which the loan was advanced and disbursed to the account of the Respondent No.2(accused) etc. had already been adduced on the record before the Court. It was submitted that even if in the cross-examination, it was admitted by the appellant that under a particular document, the appellant is entitled to charge the interest on the loan advanced; that such document is with the custody of the appellant; and that even if it was admitted that in the accounts and in the income tax returns of the Appellant, the amounts advanced has been shown, yet the Trial Court could not have called upon the applicant to produce income-tax returns for the year 2010-11, 2011-12, 2012-13. It was submitted that as such the Respondent No.2(accused) never disputed the existence of the loan agreement and that in confirmation of the same, the Respondent No.2 (accused) has even paid certain installments. That the income-tax returns are not filed by the complainant, merely in respect of the Respondent No.2 (accused) but for number of other persons and as such the

amount if, any due towards those persons even if reflected in the said returns, there is no way to ascertain as to what is the amount due to the petitioner from the Respondent No.2 (accused). It was, thus, submitted that as such, the income-tax returns are wholly irrelevant for the purpose of adjudication of the complaint under the Negotiable Instruments Act. It was further submitted that the decision of this Court in the case of *Hiten Parekh Proprietor-Parekh Enterprises vs. State of Gujarat and another*, reported at Laws (GLH)2009-10-174, as also the decision of the Bombay High Court in *Quazi Mohomed-Hanif vs. Mumtaz Begum* reported at 1990 Cri.L.J 171 (Bom.) support the stand of the petitioner.

- 4 As indicated in this Court's order dated 24.03.2026, this Court had recorded that at the time of hearing of the present petition, learned advocate for respondent No.2 did not appear. It appears that even on earlier occasion, i.e. on 26.03.2019, one Ms. Avni Patel, learned advocate had appeared on behalf of one Mr. Zakirhusen Belim, learned advocate for respondent No.2 and had asked for time. Subsequently, it appears that the High Court Legal Services Committee had fielded learned advocate Mr.

Manoj T. Danak, who too has not taken pains to remain present during any part of the day before this Court to effectively represent respondent no.2 before this Court, nor, did anyone ask for time for the said respondent No.2.

5 Having heard learned advocate for the appellant, this Court proceeds to decide the lis involved in the present matter in terms appearing hereinafter.

6 On perusal of the impugned order, the reasoning of the Court in so far as providing copies of income-tax return as aforesaid, deserve to be quoted hereinbelow for the ease of reference.

*“3. I have heard the Ld.Advocate for both the parties and examined the relevant case papers and the mandate of Section-91 of the Cr.P.Code which lays down that the documents can be called for if the Court thinks it desirable and the section itself being clear that no party to the proceedings as of right can ask for invoking the jurisdiction under this provision. As far as grounds of this applications are concerned, the same are required to be appreciated in the back drop of the complaint which is filed under Section 138 of the N.I. Act. Further, no party can be called upon to give particular evidence unless the same is permissible in law. Herein this case the part of the cross examination of the complainant has been recorded till dated 29/02/2016 and subsequently the complainant filed certain documents vide list Exh.67 on date 02/07/2016, being the copy of Rojmel as also the abstract recorded in the name of the accused.*

*4. The grievances of the accused is that the same are not as per the admission of the complainant*

during his cross examination and so the application deserves to be allowed. However, appreciating the cross examination of the complainant the same reveals that the complainant states in his cross-examination that he relies upon the agreement for his entitlement to charge the interest. Hence, the document sought for at Sr.No.1 does not need to be called for.

5. Further, the complainant states that he maintains the account pertaining to loan advanced to the accused. The complainant has relied upon the documents which he produced vide list Exh.67. Hence, the accused cannot insist for producing the same again in considered fact that it is the matter of choice of the complainant as to what evidence he intends to lead. As far as documents at Sr.No.2 is concerned. The accused has opportunity to call upon the witness. However, a copy of the income-tax return of the particular year as sought for by the accused at Sr.No.4 if be ordered to be produced, would given an opportunity to the parties to put their respective stand in accordance with law and in view of the foregoing discussion, following order is passed below this application in the interest of justice.

#### Order

The present application of the accused at Exh68 stands partly allowed to the extent that the complainant is ordered to produce the copy of income-tax return within 30 days from the date of this order if any filed in this regard for the period as shown in the application at Sr.No.4 at Exh.68.

No order as to costs.”

(Emphasis supplied by underlining)

- 7 On perusal of the aforesaid reasoning of the impugned judgement, especially at Paragraph No.5 of the said impugned order dated 27.10.2016, implies that the Trial

Court was swayed and had simply reasoned that if the copy of the income-tax return for the particular years, as sought for by the accused, is ordered to be produced, it will give an opportunity to the parties to put their respective stand in accordance with law. Except for the aforesaid, there is no reason, as to why the income-tax returns were ordered to be produced by the trial Court.

8 Now, to the case laws adduced on behalf of the appellant, it appears that *Quazi Mohomed-Hanif* (supra), does not deal with, in any manner, as to the production of income-tax returns or the necessity producing them before a Court. In fact, the said case pertains to the right of a married woman to seek maintenance, post the coming into effect of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

9 Reliance placed by the learned advocate for the appellant on *Hiten Parekh* (supra) is of some substance. In the said case, after the conviction of an accused under the provisions of Section 138 of the Negotiable Instruments Act, 1881, the appellate Court had overturned the said conviction, citing that the original complainant had totally failed in discharging the initial burden of proving that there

was legally enforceable debt, as the original complainant (of that case) did not produce any cogent proof such as books of accounts, accounts notebook, income-tax report, income-tax return, audit report, audit book etc. The said finding came to be overturned by this Court, in the said case of *Hiten Parekh* (supra), by holding that as documentary evidences, such as the debit entries, copy of ledger with details of all financial transactions having taken place before the Trial Court, therefore, the view that the complainant, in that case, has miserably failed to produce cogent proof, more particularly, the documents such as income tax returns/reports, was held to be unsustainable.

- 10 Taking cue of the aforesaid ratio laid down by this Court, in the present case too, the directions of the trial Court in directing production of income-tax returns is *de hors* any reasoning or logic. As to how the income-tax returns are relevant for the purposes of deciding the said proceedings is not borne out from the impugned order. Clearly, the income tax returns, cannot disclose the right of the Petitioner to charge interest. Nor can it the same demonstrate the aggregate outstanding due to the

Petitioner from the Complainant. However, at this stage this Court does hold that the direction to produce other documents, such as the documents pertaining to the authority of the Petitioner to charge interest etc, or the documents maintaining the accounts of the Complainant are indeed germane to the dispute before the Trial Court. Hence, this Court is inclined to grant the prayer as prayed for in the present proceedings, more particularly, at prayer clause 8(A) albite, only so far as it pertains to the quashing of impugned orders dated 27.10.2016 and 29.05.2017, to the extent that it directs production of certified copy of income tax returns.

- 11 As a result, the order dated 27.10.2016 passed below Exh.68 as well as the order dated 29.05.2017 passed below Exh.80 in Criminal Case No.3098 of 2013 are quashed and set aside to the aforesaid extent. The petition stands disposed of. The interim relief granted vide order dated 01.07.2019 by this Court stands vacated. Rule is made absolute accordingly.

SUDHIR

**(J. L. ODEDRA, J)**