IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 26471 of 2025

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DHIRENBHAI KANUBHAI JOSHI

Versus

STATE OF GUJARAT & ANR.

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Appearance:
MR VIVEK V BHAMARE(6710) for the Applicant(s) No. 1
MR VN BHAMARE(1122) for the Applicant(s) No. 1
MR ASHISH M DAGLI(2203) for the Respondent(s) No. 2
MR LB DABHI, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE ILESH J. VORA**

Date : 16/10/2026

ORAL ORDER

1. The present application is being filed by the applicant original accused, invoking inherent powers of the High Court under Section 528 of BNSS Act, 2023 (corresponding Section 482 of Cr.P.C.), challenging the correctness and legality of the impugned order dated 29.08.2025, passed by the learned Additional Sessions Judge, City Civil and Sessions Judge, Ahmedabad in Criminal Misc. Application No.5045 of 2025, whereby the application for repayment of Rs.80,000/- deposited, pursuant to the interim direction passed by the Sessions Court under Section 148 of the N.I. Act.

2. Mr.Vivek Bhamare, learned advocate for the applicant, submitted that the Sessions Court, while disposing the appeal, ought to have passed an order, directing the complainant to repay the amount so deposited by the applicant accused. Thus, it is submitted that the discretion vests with the Sessions Court, having not been properly exercised and therefore, in view of the proviso of Section 148(3) of the N.I. Act, the necessary

directions may be issued upon the complainant.

3. Vehemently, opposing the application, Mr.Darshit Karmdar, learned advocate for Mr.Ashish Dagli, learned advocate for the original complainant, contended that the Sessions Court has rightly rejected the application as against the judgment of acquittal, the complainant has preferred a Revision Application before this Court, and therefore, while rejecting the application, the Sessions Court has not committed any error.

4. In the facts of the present case, the applicant Dhiren Kanubhai Joshi was tried and prosecuted under the provision of N.I. Act by the Chief Metropolitan Magistrate Court. Vide judgment and order dated 27.04.2023, passed in Criminal Case No.113425 of 2019, the applicant herein came to be convicted for the offence of dishonor of cheque and further directed to pay Rs.4 lakhs towards the compensation to the complainant. The judgment of conviction carried to City Sessions Court by way of Criminal Appeal No.267 of 2023. It is relevant to note that at the time of admission of the appeal, the Sessions Court, vide its order dated 12.06.2023, directed the applicant accused to deposit 20% of the cheque amount i.e. Rs.80,000/- which amount had been deposited on 17.08.2023. After hearing the parties, the Additional Sessions Judge, Court No.11, vide judgment dated 30.09.2024, acquitted the accused applicant herein.

5. In such circumstances, the applicant original accused herein filed an application before the Sessions Court that he may be repaid the deposited amount by exercising power under Section 148(3) of the N.I. Act.

6. Having considered the submissions advanced by learned advocates for the respective parties, and facts and circumstances of the present case, in my opinion, the Sessions Court while rejecting the application has committed any error of law as Section 148(3) leaves no discretion to the Court, once the accused is acquitted. In order to appreciate the position of law, let us refer Section 148(3) and its proviso;

> "**S.148. Power of Appellate Court to order payment pending appeal against conviction.**
>
> 148(1) xxxxx
> 148(2) xxxxx
> 148(3) The Appellate Court may direct to release of amount deposited by the appellant to the complainant at any time during the pendency of the appeal.
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> Provided that if the appellant is acquitted, the Court shall direct the complainant to do pay to the appellant the amount so released with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within 60 days from the date of the order, or within such further period, not exceeding 30 days, as may be directed by the Court on sufficient cause being shown by the complainant."

7. Reverting to the facts of the present case, the applicant original accused had deposited the amount as directed by the Sessions Court. The amount so deposited was released in favour of the complainant with

certain conditions. Now as per the proviso, in case of acquittal of the accused, the Court has no alternate, but to direct the complainant to repay to the appellant the amount so released with the bank interest. The legislature has used word “shall”. In other words, duty caste upon the Court to issue a direction to the complainant to repay the deposited amount to the accused.

8. The learned Sessions Court while rejecting the application failed to understand the legislature intent and object and without its proper interpretation, rejected the application on the ground that the judgment of acquittal is challenged by way of revision. The filing of the revision against the acquittal cannot be a ground to reject the prayer for repayment of deposited amount and therefore, the case is made out for exercising extraordinary jurisdiction of this Court.

9. Accordingly, the application is **allowed**.

10. The order rejecting the application dated 29.08.2025, is set aside. The application being Criminal Misc. Application No.267 of 2025 is allowed. The respondent original complainant Shailesh Patel is directed to repay the applicant the amount Rs.80,000/- together with interest at the rate of 6% per annum from 29.08.2025, within a period of 60 days.

Direct Service is permitted.

(ILESH J. VORA,J)

Rakesh

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: RAKESH MAHESHKUMAR KOSHTI(HC00950), Principal Pvt. Secretary, at High Court of Gujarat on 16/10/2026 16:52:55