

(2022) 09 GUJ CK 0043

In the Gujarat High Court

Case No : R/Criminal Revision Application No. 944 Of 2022 & R/Criminal Revision Application No. 946 Of 2022

Bherulal Devilal Kharol

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 07-09-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 397, 401, 482
Negotiable Instruments Act, 1881 — Section 138

Citation : (2022) 09 GUJ CK 0043

Hon'ble Judges : Samir J. Dave, J

Bench : Single Bench

Advocate : Meet R Modi, MH Bhatt

Final Decision : Dismissed

Judgement

Samir J. Dave, J

1. The present Criminal Revision Application is preferred under Section 397 read with Section 401 as well as Section 482 of the Code of Criminal Procedure 1973 challenging the judgment and order dated 3.8.2022 in Criminal Appeal No.129 of 2019 passed by learned 6th Additional Sessions Judge, Surat confirming the judgment and order dated 25.5.2017 in Criminal Case No.24580 of 2012 passed by learned 5th Additional Chief Judicial Magistrate, Surat convicting the applicant accused for the offence under section 138 of the Negotiable Instruments Act 1881.

2. The broad facts of the case are that original complainant – respondent No.2 herein had filed Criminal Case No.24580 of 2012 against the applicant herein alleging that respondent No.2 along with a partner namely Dineshbhai Jagannath Chaudhari had intended to purchase a property bearing shop No.3, plot No.56, Ambikanagar Cooperative Housing Society situated on Survey No.8 at Pandesara, Surat from the applicant for which a notarised agreement to sell bearing entry No.6463 dated 15.12.2010 came to be executed between the parties. It is

alleged that an amount of Rs.7,00,000/- had already been paid by respondent No.2 in furtherance of the said agreement to sell and was also ready to pay the remaining amount. Eventually, respondent No.2 and the partner had requested the applicant to return the money already paid along with the profit to which the applicant was agreed and hence, the applicant issued the cheque No.773396 dated 14. 5.2012 of ICICI Bank for Rs.5,00,000/-. The said cheque came to be deposited by respondent No.2 which came to be bounced on 25.5.2012.

3. The respondent No.2, therefore, issued legal notice to the applicant on 6.6.2012 under section 138 of the Negotiable Instruments Act 1881 which was not replied by the applicant and therefore, respondent No.2 ultimately filed Criminal Case No.24580 of 2012 in the court of learned 5th Additional Chief Judicial Magistrate, Surat.

4. Learned trial Court, after full-fledged trial and after hearing the parties convicted the present applicant for the offence under section 138 of the Negotiable Instruments Act 1881 and sentenced to undergo simple imprisonment for a period of one year and also directed the applicant to pay the cheque amount towards compensation to respondent No.2.

5. Being aggrieved, the applicant preferred Criminal Appeal No.129 of 2019 before the court of learned 6th Additional Sessions Judge, Surat. The said appeal came to be dismissed by confirming the judgment and order passed by the learned trial Court. Hence, the present Criminal Revision Application.

6. Heard Mr.M.R.Modi, learned advocate for the applicant. Perused the judgment and material placed on record.

7. It is contended by Mr.M.R.Modi, learned advocate for the applicant that respondent No.2 failed to prove that there was any legal dues concerning the cheques between the parties. He submitted that valid defence raised by the applicant has not been examined by the courts below. He submitted that learned trial Court has erred in not appreciating the evidence of the applicant of having filed the complaint against respondent No.2 for forging the applicant's signature. He submitted that the courts below have passed the orders on assumptions and presumptions which has no place in eye of law. He further submitted that the applicant had categorically disputed alleged agreement of sell and the monies alleged to have been paid in lieu of the same. Lastly, Mr.Modi requested this Court allow the present Criminal Revision Application by quashing and setting the orders under challenge.

8. I have given my thoughtful consideration to the submissions made by learned advocate appearing for the applicant and also perused the record.

9. This Court has minutely gone through the impugned judgments and orders rendered by learned courts below as well as the material made available to this Court. As per the facts of the present case, it is not in dispute that the cheque in question has been issued by the applicant. The said cheque came to be bounced

and returned memo has been produced on record vide Exh.18 for which no cross examination has been undertaken by the applicant herein. Thereafter, statutory notice has also been served upon the application which is produced on record at Exh.20. It can also be seen that as the applicant failed to pay the dues of the respondent No.2, respondent No.2 filed the case before the learned trial Court under the provisions of the Negotiable Instruments Act 1881. Learned trial Court after hearing the parties, convicted the applicant herein for the offence under section 138 of the Negotiable Instruments 1881. The said order of learned trial Court came to be challenged before the lower appellate court by way of Criminal Appeal No.129 of 2019. The appellate court also vide the impugned judgment and order confirmed the judgment and order passed by the learned trial Court.

10. In view of the aforesaid factual aspect of the matter, this Court is of the considered opinion that learned Courts below have rightly convicted the applicant herein for the offence under section 138 of the Negotiable Instruments Act 1881 which does not call for any interference by this Court as the reasons assigned by the Courts below are found to be just and proper and in recording the said findings, no illegality or infirmity has been committed by it. This Court is, therefore, in complete agreement with the findings, ultimate conclusion and the resultant order of conviction recorded by learned court below and hence finds no reasons to interfere with the same.

11. In the result, this Criminal Revision Application fails and accordingly, it is dismissed.