

(2010) 12 GUJ CK 0120
In the Gujarat High Court

Case No : Criminal Revision Application No. 599 of 2010

Devendrabhai Kanubhai Patel

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 29-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2010) 12 GUJ CK 0120

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : Shailesh C. Sharma, for the Appellant; K.P. Raval, Assistant Public Prosecutor for Respondent 1 and C.R. Mishra, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—RULE. Mr. K.P. Raval, learned Additional Public Prosecutor waives the service of notice of rule on behalf of the Respondent No. 1 and Mr. C.R. Mishra, learned advocate waives the service of notice of rule on behalf of the Respondent No. 2.

2. In the facts and circumstances of the case and with the consent of the learned advocates appearing on behalf of the respective parties and as the parties have settled the dispute amicably and they have requested to compound the offence, the present Criminal Revision Application is taken up for final hearing today.

3. The present Criminal Revision Application has been preferred by the applicant original accused to quash and set aside the impugned judgment and order dated 16/8/2010 passed by the learned Additional Sessions Judge, 3rd Fast Track Court, Nadiad in Criminal Appeal No. 58/2009 as well as the judgment and order dated 10/7/2009 passed by the learned 5th Additional Senior Civil Judge and Judicial Magistrate (First Class), Nadiad in Criminal Case No. 7966 of 2006, by which the applicant has been convicted for the offence punishable u/s 138 of

Negotiable Instruments Act and sentenced to undergo three months Simple Imprisonment with fine of Rs. 1,000=00 and by which the applicant was directed to pay a sum of Rs. 17,006=00 to the Respondent No. 2 - original complainant as compensation, u/s 357 of the Code of Criminal Procedure.

4. Today, when the present Criminal Revision Application is taken up for hearing, learned advocate appearing on behalf of the respective parties have stated at the bar that the applicant has already paid a sum of Rs. 17,007=00 being cheque amount/amount to be paid towards compensation u/s 357 of the Code of Criminal Procedure. Mr. Sharma, learned advocate appearing on behalf of the applicant has stated at the bar that the applicant has already deposited/paid fine as awarded by the learned Trial Court confirmed by the Appellate Court. He has also stated at the bar that the applicant has already deposited a sum of Rs. 2,551=00 with the Gujarat State Legal Services Authority being 15% of the cost of the cheque amount, which is required to be deposited as per the decision of the Hon''ble Supreme Court in the case of Damodar S. Prabhu Vs. Sayed Babalal H.,

5. The learned advocate appearing on behalf of the respective parties have produced on record settlement agreement between the applicant - original accused and Respondent No. 2 - original complainant, which is directed to be taken on record.

6. In view of the above, the learned advocate appearing on behalf of the respective parties, more particularly Mr. C.R. Mishra, learned advocate appearing on behalf of the Respondent No. 2 - original complainant has stated at the bar that Respondent No. 2 - original complainant has no objection if the applicant is permitted to compound the offence for which he is convicted i.e. u/s 138 of the Negotiable Instruments Act and the impugned judgment and order passed by both the courts below are quashed and set aside.

7. In view of the aforesaid facts and circumstances of the case, when the parties have settled the dispute and the amount due and payable under the cheque in question inclusive of the interest on the cheque amount is deposited/paid by the applicant and the applicant has also deposited a sum of Rs. 2,551=00 towards cost so as to enable the applicant / parties and permit the applicant to compound the offence and considering the decision of the Hon''ble Supreme Court in the case of DAMODAR S. PRABHU (supra), the applicant is permitted to compound the offence u/s 138 of the Negotiable Instruments Act for which he has been punished and convicted, present Criminal Revision Application is allowed and the impugned judgment and order dated 16/8/2010 passed by the learned Additional Sessions Judge, 3rd Fast Track Court, Nadiad in Criminal Appeal No. 58/2009 as well as the judgment and order dated 10/7/2009 passed by the learned 5th Additional Senior Civil Judge and Judicial Magistrate (First Class), Nadiad in Criminal Case No. 7966 of 2006 are hereby quashed and set aside. Consequently, the applicant - original accused is ordered to be set as liberty forthwith, if he is in jail and if not required in any other case.

8. Rule is made absolute accordingly.
9. Direct Service is Permitted.