

(2011) 02 GUJ CK 0187

In the Gujarat High Court

Case No : Criminal Revision Application No. 78 of 2011 and Criminal
Miscellaneous Application No. 2208 of 2011

Ghanshyambhai Valjibhai Thakkar

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 374
Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 —
Section 138, 147

Citation : (2011) 02 GUJ CK 0187

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

Bench : Single Bench

Advocate : P.M. Lakhani, R.P. Lakhani and Dimple L. Joshi, for the Appellant;
C.M. Shah, APP, Chetanaben Joshi, for Respondent 2, for the Respondent

Judgement

M.D. Shah, J.—Rule. Learned Addl. Public Prosecutor, Ms. C.M. Shah and Learned advocate, Ms. Chetanaben Joshi waive service of rule on behalf of the Respondent Nos. 1 and 2 respectively.

2. The applicant-accused was convicted for the offence punishable u/s 138 of the Negotiable Instruments Act by the learned 2nd Addl. Civil Judge & Judicial Magistrate (First Class), Bhuj-Kachchh, by judgment and order dated 13-3-2008 in Criminal Case No. 356 of 2007 and the applicant accused was sentenced to suffer simple imprisonment for six months and to pay fine of Rs. 40,000/-, in default, to suffer further one month SI.

3. Being aggrieved and dissatisfied with the said judgment and order, the applicant accused preferred appeal u/s 374 of the Code of Criminal Procedure before the learned Addl. Sessions Judge, Kachchh at Bhuj. However, the said Criminal Appeal was dismissed by the learned Addl. Sessions Judge, Kachchh at Bhuj, by judgment and order dated 27-1-2011 passed in Criminal Appeal No. 11 of 2008.

4. Both the aforesaid judgments and orders are under challenge by the applicants in the present Criminal Revision Application.

5. It has been submitted by the learned advocates for both the parties that the matter is settled between the parties, who are cousin brothers and they may be permitted to compound the offence. An affidavit affirmed by the original complainant has been produced by the learned advocate for the applicant, Mr. P.M. Lakhani. Said affidavit is ordered to be taken on record.

6. The original complainant-Kishorbhai Hirjibhai Thakkar is present in Court. He is identified by learned advocate, Ms. Chetanaben Joshi as the original complainant. He has submitted that the matter is settled between the parties and the applicant-original accused has paid an amount of Rs. 4,40,000/- (Rupees Four Lakhs Forty Thousand only) to him as per the settlement. It is further submitted that now he has no grievance against the applicant.

7. The Apex Court in the case of Vinay Devanna Nayak Vs. Ryot Seva Sahakari Bank Ltd., has observed as under in paras 17 18 of the judgment:

17. As observed by this Court in M/s. Electronics Trade and Technology Development Corpn. Ltd., Secunderabad Vs. M/s. Indian Technologists and Engineers (Electronics) Pvt. Ltd. and another, , the object of bringing Section 138 in the statute book is to inculcate faith in the efficacy of banking operation and credibility in transacting business on negotiable instruments. The provision is intended to prevent dishonesty on the part of the drawer of negotiable instruments in issuing cheques without sufficient funds or with a view to inducing the payee or holder in due course to act upon it. It thus seeks to promote the efficacy of banking operations and ensures credibility in transacting business through cheques. In such matters, therefore, normally compounding of offences should not be denied. Presumably, Parliament also realized this aspect and inserted Section 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions)Act, 2002 (Act 55 of 2002).

18. Taking into consideration even the said provision(Section 147) and the primary object underlying Section 138, in our judgment, there is no reason to refuse compromise between the parties. We therefore dispose of the appeal on the basis of the settlement arrived at between the Appellant and the Respondent.

8. Applying the ratio of the aforesaid decision of the Apex Court to the facts of the present case, I am of the opinion that this Revision Application is required to be allowed and the parties be permitted to compound the offence.

9. In the result, the Revision Application is allowed. The judgment and order of conviction and sentence dated 13-3-2008 passed by the learned 2nd Addl. Civil Judge & Judicial Magistrate (First Class), Bhuj-Kachchh, in Criminal Case No. 356 of 2007 as also the judgment and order dated 27-1-2011 passed in Criminal Appeal No. 11 of 2008 by the learned Addl. Sessions Judge, Kachchh at Bhuj, dismissing the same are hereby quashed and set aside and the applicant is

ordered to be acquitted. The parties are permitted to compound the offence. Amount paid towards fine is ordered to be refunded to the applicant on proper verification and identification. Rule is made absolute. Direct service is permitted.

10. In view of the fact that the main revision is allowed, Cri. Misc. Appln. No. 2208 of 2011 does not survive and is disposed of accordingly.