

(1996) 10 GUJ CK 0008
In the Gujarat High Court

Case No : Special Civil Application No. 1149 of 1996 and Criminal Case No. 174 of 1991

Jayesh Chandulal Shah

APPELLANT

Vs

Rajesh Ambashanker Nagar

RESPONDENT

Date of Decision : 03-10-1996

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (1998) 94 CompCas 112 : (1997) 2 GLR 1104

Hon'ble Judges : S.D. Pandit, J

Bench : Single Bench

Judgement

S.D. Pandit, J.—Rule. As the notice was issued to the respondents at the stage of admission and as the matter is heard at length on the merits by giving opportunity to argue on the merits, I proceed to dispose of it finally.

2. The original accused in Criminal Case No. 174 of 1991 has preferred the present application against the order of the learned Metropolitan Magistrate, Ahmedabad, on July 5, 1996.

3. The present petitioner, the original accused in Criminal Case No. 174 of 1991, was having some transaction with the original complainant, Gujarat Agro Industries Corporation Ltd., of taking their products on credit and towards his dues, he had issued two cheques of Rs. 50,000 each. Those cheques were not cleared and were dishonoured when the complainant had presented them for clearance to the bank, hence the complainant has taken recourse to the provisions of section 138 of the Negotiable Instruments Act, 1881, and has lodged a private complaint against the present revision applicant. After registering the said complaint, process was issued against the present revision applicant and the revision applicant appeared before the court on August 19, 1991.

4. It is the claim of the revision applicant that though he is regularly attending

the court from August, 1991, till today, the hearing in the said criminal case has not taken place. The present revision applicant had filed an application on July 5, 1996, by relying on the decision of the apex court in the case of Common Cause A Registered Society through its Director Vs. Union of India (UOI) and Others, seeking his acquittal in this case on the strength of the said decision. He had also stated that before he was served with the summons of the criminal case, he was not served with the notice of demand of payment of the amount of two cheques and there was also payment of the amount of the two cheques in question and his liability under the said cheques also stood satisfied. In the circumstances, he sought his acquittal and the quashing of the proceeding before the learned Metropolitan Magistrate, but his application has been rejected by the learned Metropolitan Magistrate by holding that the offence alleged against him was an "economic offence" and consequently it was not covered by the decision of the apex court cited before him and the case before him fails within the exceptions mentioned in the decision of the Supreme Court.

5. There is no dispute of the fact that the directions issued by the apex court in the case of Common Cause, A Registered Society v. Union of India [1997] 88 Comp Cas 1; AIR 1996 SC 1619, are binding against this court as well as the learned Metropolitan Magistrate. As per the said directions where the cases pending in the criminal court under the Indian Penal Code or any other law for the time being in force are punishable with imprisonment up to one year and with or without fine and their pendency is for more than one year and in such cases, trials still have not commenced, then the criminal court shall acquit or discharge the accused, as the case may be, and close such cases. The offence involved in this case is punishable u/s 138 of the Negotiable Instruments Act, 1881, and the punishment under the said section 138 is up to one year and fine. Therefore, it is quite obvious that the offence punishable u/s 138 of the Negotiable Instruments Act, 1881, is covered by the directions issued by the apex court in the said case.

6. No doubt, while giving the said directions, it has also been made quite clear by the apex court, in para. 4 of its judgment, that those directions are not to apply to the cases mentioned in the said para. No. 4. In the said exceptions mentioned in para. 4, the "economic offences" are also the exceptional offences and "economic offences" are not to be governed by the said directions. The learned Metropolitan Magistrate has come to the conclusion that the offence punishable u/s 138 of the Negotiable Instruments Act, 1881, is an "economic offence". He has not given any reasons for holding it as an "economic offence". Learned counsel for respondent No. 2 has cited before me the commentary by Mr. S. N. Gupta and Mr. A. N. Shah on The Law of Dishonour of Cheques. In the said commentaries both the authors have observed, according to the learned advocate for respondent No. 2, that the offence u/s 138 would amount to an economic offence. But it is very pertinent to note that both the authors have not given any specific and cogent reasons as to why they were of the opinion that the said offence punishable u/s 138 should be an economic offence. The learned

author, Shri A. N. Shah, states at page 244 as under :

"Section 138 was introduced with a laudable public policy behind it which intends to prevent or curtail a mischief which is likely to affect financial transactions and thereby trade and business and ultimately economy of the country."

7. The above observation would not amount to the author opining that it is an "economic offence" as contemplated by their Lordships of our apex court in the case of Common Cause A Registered Society through its Director Vs. Union of India (UOI) and Others, .

8. The Criminal Procedure Code has made provision in section 468 for prescribing the limitations for lodging of prosecution. The Legislature, thereafter, has formed an opinion that the provisions of the said section 468 of the Criminal Procedure Code, 1973, and other provisions in Chapter XXXVI of the Code of Criminal Procedure, 1973, shall not be applicable to "economic offences". For that purpose an Act No. 12 of 1974, the Economic Offences (Inapplicability of Limitations) Act, 1974, has been enacted on March 27, 1974. The said Act gives the category of economic offences by way of providing a Schedule under the said Act. In the said Act, there is no mention of the Negotiable Instruments Act. I am aware that the provisions of section 138 of the Negotiable Instruments Act, 1881, have come into force from April 1, 1989, therefore, it is but natural that the said Act will not find place in the Schedule provided under the said Act of 1974. But the said provisions of Act No. 12 of 1974 could be taken by way of guidance. Therefore, the exceptions given in para. 4 of the judgment by the judges of the apex court will have to be read along with the Schedule given in the said Act No. 12 of 1974. If the exceptions given in para. 4 of the judgment of the apex court and the Schedule given in the said Act No. 12 of 1974 are read together, then it becomes very difficult to accept the contentions raised by learned counsel for respondent No. 2 that the offence punishable u/s 138 of the Negotiable Instruments Act, 1881, is an economic offence.

9. The provisions of section 138 of the Negotiable Instruments Act are enacted in order to create confidence regarding the banking system and to give an increased acceptability to cheques. Section 138 of the Negotiable Instruments Act, 1881, is intended to curb instances of dishonouring of cheques and prevent the mischief in commercial transactions entered into on mutual trust and faith. Section 138 says that the cheque must have been issued towards satisfaction of a debt. Then section 142 of the Negotiable Instruments Act indicates that the offence u/s 138 of the Negotiable Instruments Act is a non-cognizable offence. The said section 138 by its proviso provides that the payee or the holder in due course must serve a notice in writing to the drawer of the cheque within 15 days of getting information from the bank of the dishonouring of the cheque and only on failure of the drawer to pay the amount within 15 days of the receipt of the notice issued by the payee or the holder in due course the payee or the holder in due course can lodge a complaint, before the Metropolitan Magistrate or the Judicial Magistrate, First Class, as the case may be. If all these provisions of

sections 138 and 142 of the Negotiable Instruments Act, 1881, are considered, then it is not at all possible to hold that the offence punishable u/s 138 is an "economic offence".

10. The transaction between the present revision applicant and respondent No. 1 is a mercantile transaction and in the said mercantile transaction, the cheque which happened to be dishonoured subsequently was issued by the revision applicant. If that nature of transaction along with the provisions of section 138 as well as the Schedule to Act No. 12 of 1974, and the exceptions given in para. No. 4 by their Lordships are considered together, then it becomes very difficult to hold that the offence in question is an economic offence.

11. In the instant case, the petitioner had appeared before the court on August 19, 1991. It is the claim of the petitioner that from that date till the date of the filing of the application before the trial court, he was regularly attending the court, but the trial has not taken place. It is also his claim that as a matter of fact, before the summons of the case could be served upon him, the amount of the two cheques in question was already recovered by the complainant, respondent No. 1. If the decision of the apex court taken into consideration, then it would be quite clear that the directions given in the said decision are issued for the purpose of reducing the pendency of a large number of cases in courts. The exceptions given in paragraph No. 4 of the judgment of the Supreme Court in *Common Cause, A Registered Society v. Union of India* [1997] 88 Comp Cas 1; AIR 1996 SC 1619, are with a view to see that because of the directions, society at large does not suffer and public interest is not defeated. Therefore, in those offences in which the real interest is that of society at large, and in which social welfare and public health are involved, then those are to be the exceptions to the directions given in the said decision of the apex court. It could not be said that in a non-payment of the amount of cheque given to satisfy a private debt the interest of society at large and welfare of the society and public health is involved. Hence, the offence u/s 138 of the Negotiable Instruments Act could not be said to be an offence against the society at large.

12. Therefore, in view of the above discussion, I am of the view that the offence punishable u/s 138 of the Negotiable Instruments Act will not amount to an "economic offence" contemplated in the directions given in paragraph No. 4 of the judgment by the apex court in the case of *Common Cause, A Registered Society v. Union of India* [1997] 88 Comp Cas 1; AIR 1996 SC 1619. I, therefore, hold that the present revision application will have to be allowed. The order passed by the learned Metropolitan Magistrate rejecting the application of the petitioner will have to be set aside. The said application of the present petitioner stands allowed. The petitioner stands acquitted of the offence with which he was charged.

13. The learned advocate for respondent No. 1 prays to stay the operation of this order of acquittal, but I do not find any reason to accept his prayer. His prayer is rejected.

14. Rule is made absolute.