

(2009) 11 GUJ CK 0013
In the Gujarat High Court

Case No : Criminal Revision Application No. 816 of 2007

Mihir Rakeshkumar Pandya		APPELLANT
	Vs	
State of Gujarat and Another		RESPONDENT

Date of Decision : 09-11-2009

Acts Referred:

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

Citation : (2009) 11 GUJ CK 0013

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

Bench : Single Bench

Advocate : Rajesh K. Kanani, for the Appellant; Manisha Lavkumar, Learned APP for Respondent No. 1 and Meena Vyas, for the Respondent

Final Decision : Dismissed

Judgement

M.D. Shah, J.—Rule. Learned APP, Ms. Manisha Lavkumar, for the respondent No. 1 and learned advocate for the respondent No. 2, Ms. Meena Vyas, waive service of rule.

2. The applicant-original accused has preferred this application with a prayer to quash and set aside the judgment and order dated 31-7-2007 passed by the learned Presiding Officer & Addl. Sessions Judge, Fast Track Court No. 5, Ahmedabad (Rural), in Criminal Case No. 14 of 2007 whereby the sentence of two years SI imposed on the respondent No. 2—accused by the learned Chief Judicial Magistrate, Ahmedabad (Rural) at Mirzapur, Ahmedabad, for the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 was quashed and set aside and respondent No. 2 herein was ordered to pay Rs. 80,000/- towards compensation to the original complainant u/s 357 of Cr.P.C. Out of amount of Rs. 25,000/- imposed as fine, Rs. 10,000/- were ordered to be paid towards special costs of appeal and rest of Rs. 15,000/- was treated as fine.

3. The respondent No. 2—original accused has been convicted for the offence punishable u/s 138 of the Negotiable Instruments Act by the learned Chief

Judicial Magistrate, Ahmedabad (Rural) at Mirzapur by judgment and order dated 4th April, 2007 in Criminal Case No. 144 of 2005 for dishonour of three cheques issued by the respondent No. 2-original accused whereby the respondent No. 2-accused was sentenced to suffer two years S.I. and to pay fine of Rs. 25,000/-, in default, to suffer further S.I. for two months. The original accused then preferred Criminal Appeal No. 14 of 2007 against the said judgment and order. During the pendency of the appeal, the original accused deposited Rs. 80,000/- with the District Court in pursuance of the order passed by the appellate Court. The matter was not settled between the parties. After hearing the arguments of learned Counsel of both the parties, the appeal was partly allowed vide judgment and order dated 31-7-2007 passed by the learned Presiding Officer & Addl. Sessions Judge, Fast Track Court No. 5, Ahmedabad (Rural), in Criminal Case No. 14 of 2007 whereby the sentence of two years SI imposed on the respondent No. 2-accused by the learned Chief Judicial Magistrate, Ahmedabad (Rural) at Mirzapur, Ahmedabad, for the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 was quashed and set aside and respondent No. 2 herein was ordered to pay Rs. 80,000/- towards compensation to the original complainant u/s 357 of Cr.P.C. Out of amount of Rs. 25,000/- imposed as fine, Rs. 10,000/- were ordered to be paid towards special costs of appeal and rest of Rs. 15,000/- was treated as fine, which is giving rise to the present revision by the original complainant.

4. Heard learned advocate Mr. Rajesh K. Kanani for the applicant, Ms. Manisha Lavkumar, learned APP for respondent No. 1 and learned advocate, Ms. Meena Vyas for the respondent No. 2-original accused.

5. It has been submitted by learned Advocate Mr. Rajesh Kanani appearing for the applicant-original complainant that he had not voluntarily deposited the amount but the amount has been deposited in pursuance to the order passed by the Appellate Court. According to him, considerably long time had elapsed after issuance of the cheque; that merely by depositing the amounts of the cheques the original accused cannot be permitted to escape from the criminal liability, more particularly, because the cheque amounts have been deposited after a pretty long time. It is further the submission of the learned Counsel that lenient view can be taken only if the original accused had deposited the cheque amounts within a reasonable time during the pendency of the appeal before the trial Court. It has also been submitted by the learned Advocate that as per the account, the accused is required to pay a huge amount and the matter was not settled. Taking into consideration the conduct of the accused it is submitted that no leniency be shown towards the original accused and it is requested that the revision deserves to be allowed by quashing and setting aside the order passed by the Appellate Court.

6. It has been submitted by learned Advocate Ms. Meena Vyas that the respondent No. 2-original accused has already deposited Rs. 80,000/- in cash in the court below. Thus, the entire amounts have been deposited by the

respondent No. 2-accused and thus the order passed by the Appellate Court has been complied with by the respondent No. 2. It is therefore requested that the revision deserves to be dismissed and order passed by the Appellate Court is required to be confirmed.

7. This Court has gone through the judgment and order passed by the Courts below. It is an admitted fact that during the pendency of the appeal, the respondent No. 2-original accused has deposited Rs. 80,000/- by way of draft which is the amount of the dishonoured cheques. However, since the validity of draft has been expired, the respondent No. 2 was ordered to take back the draft to invalidate and to deposit cash amount of Rs. 80,000/-. Xerox copy of the receipt for having deposited Rs. 80,000/- in court is produced, which is ordered to be taken on record. Thus, it appears that the respondent No. 2-original accused has complied with the order passed by the Court. Hence, there is no substance in the submission of learned advocate for the applicant. Hence, I am constrained to hold that since the original accused has complied with the order passed by the court, order passed by the Appellate Court deserves to be confirmed.

8. Reference in this connection may be had to the decision rendered in the case of Govardhan Das Partani and Anr. v. State of A.P. and Anr. reported in : (2003) 10 SCC 244 wherein at paragraph 2 of the judgment , it has been observed as under:

2. We are not inclined to interfere with the conviction passed by the Court u/s 138 of the Negotiable Instruments Act. However, in view of the subsequent development that admittedly the appellant has paid a sum of Rs. 2,15,000 (Rupees two lakh and fifteen thousand only) which is the amount covered by the cheques, we are inclined to show some leniency to the appellant in the matter of sentence. It is true that learned Counsel for the complainant submitted that the principal amount is not sufficient to clear the entire liability. Nonetheless, we considered the fact that atleast the principal amount has been paid. It is open to the respondent to resort to other civil remedies for realising the balance amount, if any, due to him. We, therefore, restore the sentence passed on the appellant by the Sessions Court in appeal i.e. a fine of Rs. 2000/- alone. In default of payment of fine within 2 months, he shall undergo imprisonment for a period of one month.

9. Applying the aforesaid ratio to the facts of the present case, no interference is called for in the order passed by the appellate court and the revision is required to be dismissed.

10. In view of what is discussed hereinabove, the revision is dismissed. The judgment and order dated 31-7-2007 passed by the learned Presiding Officer & Addl. Sessions Judge, Fast Track Court No. 5, Ahmedabad (Rural), in Criminal Case No. 14 of 2007 is hereby confirmed. The complainant is at liberty to withdraw the amount of Rs. 80,000/- which is deposited by the respondent No. 2

in cash in the court below. If such an application for withdrawal is moved by the original complainant, the court below shall pay the same on proper verification and identification. If the said amount is not withdrawn by the applicant-original complainant, it shall be invested in any nationalized bank in the name of Nazir initially for a period of one year which shall be renewed till further orders till disposal of the case, whichever is earlier. The fine imposed by the Appellate Court is maintained. The applicant is at liberty to resort to any civil remedy, if available, for realising any balance amount due. Rule is discharged.