

(2024) 05 GUJ CK 0086

In the Gujarat High Court

Case No : R/Criminal Revision Application (Against Conviction - Negotiable Instrument Act) No. 733 Of 2024

Mumtazbanu Iliyaskhan Pathan

APPELLANT

Vs

State Of Gujarat & Anr

RESPONDENT

Date of Decision : 23-05-2024

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138, 147

Citation : (2024) 05 GUJ CK 0086

Hon'ble Judges : Pranav Trivedi, J

Bench : Single Bench

Advocate : Kamlesh S Kotai, Jay Mehta

Final Decision : Allowed

Judgement

Pranav Trivedi, J

1. Learned advocate Mr.Chintan Adeshra would submit that he has received instructions to appear on behalf of the complainant and he would file his Vakaltnama in the Registry. Registry to accept the same.

2. Rule. Learned APP waives service of notice of rule for the respondent – State and learned advocate Mr.Adeshra waives service of rule for respondent No.2 – original complainant.

3. The revision has been filed challenging the concurrent findings arrived at by the Court below whereby in Criminal Case No.4400 of 2021, the learned Trial Court has convicted the revisionist for the offence under Section 138 of the Negotiable Instruments Act and ordered to undergo rigorous imprisonment of six months and also passed the order of compensation of Rs.85,000/- to be paid to the complainant, failing which rigorous imprisonment of further 90 days has been awarded. The revisionist unsuccessfully assailed the said judgment and order in Criminal Appeal No.187 of 2023 whereby the learned Additional Sessions Judge, Mehsana confirmed the judgment and order. Hence the present revision.

4. When the revision is called out for hearing, the complainant along with his learned advocate Mr. Adeshra is present. Both the parties as well as their learned advocates submit that the parties have amicably settled their dispute and all the amount of cheque has been received by the first informant. In support of their statement, an affidavit of complainant is also produced which is taken on record. Section 147 of the Negotiable Instruments Act permits compounding of offence at any stage of the hearing. Therefore, compounding of the offence is also permitted at the stage of the present revision.

5. After verifying voluntary character of the compromise and the request for compounding of offence, the compounding of the offence is permitted.

6. In light of the decision rendered by the Honble Apex Court in the case of Damodar S. Prabhu V/s. Sayed Babalal H. reported in AIR 2010 SC 1907, the applicant is required to pay 10% of the cheque amount by way of cost with the High Court State Legal Services Authority in accordance with the guidelines laid down in the said decision. In para 17 of the said decision, the Honble Apex Court has also observed that the Court can reduce the costs with regard to the specific facts and circumstances of the case. In the instant case, the applicant suffered imprisonment after conviction, therefore, to meet the ends of justice, the applicant is directed to deposit 10% of the cheque amount with the High Court Legal Services Authority.

7. For the foregoing reasons, I pass the following order:

(I) The impugned judgment and order of conviction under Section 138 of the Negotiable Instruments Act and passing of sentence thereof by the learned Trial Court in Criminal Case No.4400 of 2021 and confirmed by the Sessions Court in Criminal Appeal No.187 of 2023 are hereby quashed and set aside on account of compounding of offence with the complainant.

(II) In view of this, the revisionist shall not be under obligation to serve the remaining sentence and the revisionist shall be treated as acquitted and is to be set free on account of compounding of offence with the complainant. If any amount is paid towards fine by the revisionist, same may be refunded after due verification.

8. Accordingly, the present revision stands allowed subject to payment of 10% of the cheque amount of Rs.70,000/- by the revisionist with the Gujarat State Legal Services Authority, within three weeks from today. The receipt thereof shall be produced on record. Rule is made absolute to the aforesaid extent. Direct service permitted.