

(2011) 03 GUJ CK 0115

In the Gujarat High Court

Case No : Criminal Misc Application No. 323 of 2011

Pravinbhai Deepchandbhai Patel

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 14-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 144, 406, 420

Citation : (2011) 4 BC 289

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

Bench : Single Bench

Advocate : V.M. Pancholi, No. 1, for the Appellant; L.R. Pujari, APP. for the Respondent No. 1, Mr. J.R. Dave and Mr. Vishal J. Jyotish, Advocates for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

M.D. Shah, J.—Rule. Learned Addl. Public Prosecutor, Mr. L.R. Pujari for the respondent No. 1 and learned Advocate, Mr. J.R. Dave for the respondent No. 2 waive service of rule.

2. Short facts are that one Pareshbhai Naranbhai Patel-original accused No. 1 purchased goods from present petitioner-original accused No. 2 and gave cheque for Rs. 77,450/- in the name of Nijanand Textile signed by the accused No. 1 for proprietor of Laxmi Textiles. As the complainant needed money, he obtained cash from his relative and handed over the said cheque. The said cheque when deposited was dishonoured and the complainant took the said cheque and deposited in his account which was also dishonoured. Hence, a notice was issued by the complainant. As no reply was received nor any reply filed, complaint was filed and in pursuance thereof, learned Magistrate sent it for inquiry u/s 156(3), Cr.P.C. to Police Inspector, Sardarnagar Police Station, who, at the end of investigation, submitted "C" summary report stating that dispute between the

parties is of civil nature. However, said report has not been accepted by the learned Magistrate. The learned Magistrate registered the said case being Criminal Case No. 598 of 2009 by issuing process u/s 138 of Negotiable Instruments Act. Hence, this application u/s 482 of the Code of Criminal Procedure has been filed for quashing of Criminal Case No. 598 of 2009 pending before the Court of learned Metropolitan Magistrate, Court No. 17, Ahmedabad, for the offence punishable under Sections 406, 420 and 114 of IPC qua the present petitioner.

3. Heard learned Advocate, Mr.V.M. Pancholi for the petitioner, learned Addl. Public Prosecutor, Mr. L.R. Pujari for the respondent No. 1 and learned Advocate, Mr. J.R. Dave, for the respondent No. 2.

4. It is submitted by the learned Advocate, Mr. Pancholi that the cheque in question has been issued by the accused No. 1 as a proprietor of Laxmi Textiles. According to him, the petitioner is not the proprietor of Laxmi Textiles and the complainant himself stated that the cheque is not issued from the account maintained by the petitioner but by the accused No. 1. He relied on a decision of the Apex Court reported in Raghu Lakshminarayanan Vs. Fine Tubes, as well as the decision of this Court in the case of Mahendrakumar Tulsibhai Patel v. State of Gujarat & Anr., IV (2009) CCR 196=II (2009) BC 293=II (2009) CLT 265=2008 (1) G.L.H. 196.

5. This Court has gone through the complaint together with the decisions relied on by the learned Advocate for the petitioner. It is to be noted that the petitioner, who is the accused No. 2, has not issued by the cheque nor is he the signatory of the said cheque. Cheque has been issued by the accused No. 1 under his signature in the name of proprietor of Laxmi Textiles. Hence, the petitioner cannot be held liable for issuance of said cheque. It has been held by this Court in Mahendrakumar Tulsibhai Patel (supra) as under:

10. As per Section 138 of the N.I. Act, where any cheque drawn by a person on an account maintained by him with a Banker for payment of any amount of money to another person from out of that account for the discharge in whole or in part of any debt or other liability, is returned by the Bank unpaid either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that Bank "such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of the said Act, be punished." Under the circumstances, "such person, who has drawn the cheque on an account maintained by him is required to be prosecuted for the offence u/s 138 of the NI Act." In the present case, admittedly, the applicant-original accused No. 2 is neither the signatory of the cheque nor has drawn the cheque on an account maintained by him with the Banker. In the present case, admittedly the cheques in question are drawn and signed by the accused No. 1 and might be the accused No. 2-applicant herein might have given the said cheques and it can be said that the applicant-original

accused No. 2 might have committed any other offence under the Indian Penal Code but so far as criminal liability for the offence u/s 138 of the NI Act is concerned, in the facts and circumstances of the case and as stated above, when the applicant-original accused No. 2 is neither the signatory of the cheques in question nor has drawn the cheques in question on an account maintained by him, it cannot be said that he is liable for the prosecution u/s 138 of the NI Act and/or he has committed offence u/s 138 of the NI Act. Under the circumstances, to continue criminal proceedings by way of impugned criminal complaints against the applicant-original accused No. 2 for the offence u/s 138 of the NI Act requires to be quashed and set aside as to continue with the said criminal proceedings would be abuse of process of Court.

6. In the present case, it is clear that the cheque has been issued by the accused No. 1 from the account maintained by him as a proprietor of Laxmi Textiles and the present petitioner cannot be fastened with the liability of said cheque since he has not signed the cheque. Hence, applying the ratio of the aforesaid decision of the Apex Court to the facts of the present case, I am of the opinion that the petitioner cannot be held liable for prosecution. Hence, in view of the above, this Cri. Misc. Application is required to be allowed and the complaint qua the present petitioner is required to be quashed and set aside.

7. In the result, this Cri. Misc. Application is allowed. Criminal Case No. 598 of 2009 pending before the Court of learned Metropolitan Magistrate, Court No. 17, Ahmedabad, is quashed qua the present petitioner. Rule is made absolute. Direct service is permitted.