

(2024) 04 GUJ CK 0084

In the Gujarat High Court

Case No : R/Criminal Misc.Application (For Quashing & Set Aside Fir/Order) No.
7511 Of 2024

Premal Kamleshbhai Patel

APPELLANT

Vs

State Of Gujarat & Anr

RESPONDENT

Date of Decision : 23-04-2024

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Negotiable Instruments Act, 1881 — Section 138

Code Of Criminal Procedure, 1973 — Section 320, 374, 389, 418, 418(2), 482

Citation : (2024) 04 GUJ CK 0084

Hon'ble Judges : Hasmukh D. Suthar, J

Bench : Single Bench

Advocate : Yogesh G Kanade, Shruti Pathak

Final Decision : Dismissed

Judgement

Hasmukh D. Suthar, J

[1.0] By way of present petition under Section 482 of the Code of Criminal Procedure, 1973 (For short "CrPC"), the petitioner has requested to quash and set aside the judgment and order dated 30.12.2023 by the learned 3rd Additional Chief Judicial Magistrate, Gandhinagar in Criminal Case No.2550 of 2023 for the offence under Section 138 of the Negotiable Instruments Act, 1881, whereby the learned Magistrate has been pleased to convict the present petitioner for the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo simple imprisonment of one month and also ordered to pay Rs.65,000/- towards compensation to the complainant with interest at the rate of 8% from the date of filing of complaint and further issued warrant under Section 418 of the CrPC.

[2.0] Heard learned advocate for the petitioner and learned APP for respondent No.1 – State of Gujarat.

[3.0] At the outset, it is worth to mention that the petitioner has directly approached this Court without resorting to alternative statutory remedy available to the petitioner under Section 374 of the CrPC.

[4.0] Learned advocate for the petitioner has submitted that this Court has powers to quash the judgment and order of conviction and limited jurisdiction to compound an offence within framework of section 320 of CrPC is not an embargo against invoking inherent powers under Section 482 of the CrPC. In support of his submission, he has relied on the decision of Hon'ble Supreme Court in the case of Ramgopal vs. State of Madhya Pradesh reported in 2022 Cr.L.J. 2801 and orders passed by the coordinate Bench of this Court in the proceedings of Criminal Misc. Application Nos.21422 of 2021, 6184 of 2022 and 23325 of 2022.

[5.0] It is needless to say that as the offence is compoundable, compounding of offence is permissible upto the Hon'ble Apex Court as statute has provided for compounding of the offence but the fact remains that without filing or availing statutory remedy, as conviction is recorded and limitation period has also expired and further, warrant under Section 418(2) of the CrPC is in force and executed beyond the limitation, no case is made out to exercise powers under Section 482 of the CrPC on three counts viz. (i) if such litigation is entertained then constitutional Courts will be flooded with such litigation; (ii) after the expiry of limitation period such exercise is even otherwise not permissible and (iii) even if such powers are exercised then it would amount to exercise of power under Section 389 of the CrPC i.e. suspension of sentence.

[5.1] Learned advocate for the petitioner has relied on the decision in the case of Ramgopal (Supra). As the statutory remedy is available, question to exercise power under Section 482 of the CrPC does not arise. It is true that in compoundable offences, compounding of offence is permissible upto Hon'ble Supreme Court but it does not mean that the accused can straightway approach this Court and thus, such an approach on the part of the petitioner is nothing but to thwart the proceeding of competent Court as the accused has been convicted after following due process of law and though conviction is awarded and warrant under Section 418 of the CrPC is issued against the petitioner, same has remained unserved till date. Hence, even the conduct of the accused is also required to be considered.

[6.0] At this stage, it is apposite to refer to the decision of the coordinate Bench of this Court in the case of Bhoomi Exim & Anr. Vs. State of Gujarat & Anr. (SCR.A/12711/2023, dated 07.10.2023); decision of Hon'ble Supreme Court in the case of Arun Shankar Shukla vs. State of U.P & Ors. reported in (1999)6 SCC 146 and in the case of Hamida Vs. Rashid alias Rasheed and Ors. reported in (2008) 1 SCC 474 as also considering the fact that the petitioner has not availed the statutory remedy of filing criminal appeal and therefore, this Court is not inclined to entertain the present petition at this stage. The Hon'ble Apex Court in the case of Hamida (Supra) has been pleased to observe in Headnote B as under:

"B. Criminal Procedure Code, 1973 – S.482 – Inherent powers of High Court – Scope – Limits of – Alternative remedy – Availability of – Effect – Held, has to be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities or when some miscarriage of justice is done – Practice of High Courts in entertaining petitions under S.482, when there was an effective alternative remedy available, deprecated – Ends of justice would be better served if valuable time of the Court is spent in hearing those appeals rather than entertaining petitions under S.482 CrPC at an interlocutory stage which are often filed with some oblique motive in order to circumvent the prescribed procedure, as in the instant case, or to delay the trial which enable the accused to win over the witnesses by money or muscle power or they may become disinterested in giving evidence, ultimately resulting in miscarriage of justice (paras 7, 8 and 13)"

[7.0] In view of the above settled position of law, present petition is dismissed in limine. However, it is open for the petitioner to avail alternative remedy i.e. of filing criminal appeal. However, if the parties appear before the learned Sessions Court then the concerned Court shall expedite the hearing / proceeding of Criminal Appeal that may be filed by the petitioner. The learned 3rd Additional Chief Judicial Magistrate, Gandhinagar is directed to get execute the warrant dated 30.12.2023 issued against the petitioner and the Superintendent of Police, Gandhinagar to submit a report before the concerned Court as to what steps have been taken for compliance of the order dated 30.12.2023 passed by the learned 3rd Additional Chief Judicial Magistrate, Gandhinagar in Criminal Case No.2550 of 2023, within a period of two weeks from the date of receipt of this order.

[8.0] With above observations, present petition is dismissed at this stage. It is made clear that this Court has not examined the merits of the case.