

(2020) 01 GUJ CK 0016
In the Gujarat High Court

Case No : R/Criminal Revision Application No. 1431 Of 2019

Premal Maheshchandra Trivedi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-01-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 389

Citation : (2020) 01 GUJ CK 0016

Hon'ble Judges : B.N. Karia, J

Bench : Single Bench

Advocate : Dilbur, Tushar L Sheth, Mh Bhatt

Final Decision : Disposed Of

Judgement

B.N. Karia, J

Rule. Learned APP waives service of notice of rule for and on behalf of the respondent-State. As Mr. Tushar Sheth, learned advocate appearing on behalf of the respondent no.2, he was permitted to file his vakalatnama before the Registry by an order dated 20.12.2019 thus, learned advocate Mr. Tushar Sheth waives service of notice of rule for and on behalf of the respondent no.2.

The applicant has challenged the impugned judgment and order dated 22.12.2018 passed by learned Additional Chief Metropolitan Magistrate, Negotiable Instruments Act, Court No.35, Ahmedabad in Criminal Case No. 778 of 2015 as well as judgment and order dated 18.10.2019 passed by learned Additional Sessions Judge, City Civil and Sessions Court, Court No. 10, Ahmedabad in Criminal Appeal No. 42 of 2019.

Heard learned advocate for the applicant.

It was submitted by learned advocate for the applicant that impugned judgment and order passed by the trial court as well as confirmed by the appellate Court are against the evidence on record. That, Courts below have failed to appreciate

that the complainant had entered into a business plan alongwith the applicant and one another person and purchased a property whereby all three of them contributed equally to the sale consideration which was paid to the seller. That, no profit was made from the said business plan and loss had to be suffered by the complainant as well as the applicant. It is further submitted that as per business proposal, nowhere it was promised to the complainant that if the business fails, the applicant would be liable to return his contribution. That, both of them have paid their share of consideration, however, both of them were not made trustees by the trust and suffered loss of profit which had to be borne by both of them. That, courts below have failed to appreciate that complainant had almost recovered his contribution by selling his 1/3rd share in the property for an amount of Rs. 28 lacs to a third party.

Learned advocate for the respondent no.2 has objected for granting prayer made by the present applicant in para 6 and argued that time to surrender the applicant before the jail authorities cannot be extended by this court. It is further submitted that cheque amount was required to be deposited by the present applicant otherwise bail cannot be granted.

Learned advocate for the respondent no.2 has placed reliance in the case of Arvind Maneklal Bhagat v. State of Gujarat, reported in 1987(1) GLH 277. Considering the facts of the cited case, it is pertinent to Sessions Court. That, after hearing the appeal, Sessions Court cannot give any such time to the accused to surrender pending filing of revision application as has been done because it indirectly tantamounts to suspending the convicted accused on bail.

Learned APP for the respondent-State has requested to pass necessary orders.

Here undisputedly, the applicant was on bail, and thereafter, he was convicted by the trial court and his sentence was confirmed by the appellate court. Yet, he is not in judicial custody and time granted to the applicant was extended time to time by this Court and under Section 389 of CrPC, this Court can certainly suspend the sentence imposed by the trial court till hearing and final disposal of the revision application.

Having considered the submissions made by learned advocates for the respective parties as well as learned APP for the respondent-State, it appears that out of the cheque amount of Rs. 10 lacs, the applicant has deposited in all total Rs. 5 lacs ie., 50% of the cheque amount and has shown his bonafides. Issue raised in the revision application requires consideration, which is prima facie on its legal basis.

Hence, prayer made in para 6(C) shall be granted. The sentence imposed upon the applicant vide order dated 22.12.2018 passed by learned Additional Chief Metropolitan Magistrate, Negotiable Instruments Act, Court No.35, Ahmedabad in Criminal Case No. 778 of 2015 as well as judgment and order dated 18.10.2019 passed by learned Additional Sessions Judge, City Civil and Sessions Court, Court No. 10, Ahmedabad in Criminal Appeal No. 42 of 2019 stands.