

(1997) 04 GUJ CK 0002
In the Gujarat High Court

Rajesh Ambashanker Nagar

APPELLANT

Vs

Jayesh Chandulal Shah

RESPONDENT

Date of Decision : 04-04-1997

Acts Referred:

Constitution of India, 1950 — Article 142
Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 139, 140, 141
Penal Code, 1860 (IPC) — Section 304A, 362, 498A

Citation : (1997) 2 GLR 1304

Hon'ble Judges : S.D. Pandit, J

Bench : Single Bench

Judgement

S.D. Pandit, J.—Rule. The original respondent No. 1 in Special Criminal Application No. 1149 of 1996 has filed the present application.

2. The applicant wants me by this application to review the judgment delivered by me on 3rd October, 1996 in view of the decision of the Apex Court in the case of Common Cause A Regd. Society Vs. U.O.I. and Others, .

3. The earlier Special Criminal Application No. 1149 of 1996 was filed by respondent No. 1 in this review application seeking quashing of the said proceeding of Criminal Case No. 174 of 1991 which was registered on the strength of a private complaint lodged by the present applicant before me on the basis of the decision of the Apex Court in the case of Common Cause, A Registered Society v. Union of India and Ors., AIR 1996 SC 1619 : 1997 (2) GLR 1297. In the said case of AIR 1996 SC 1619: 1997(2) GLR 1297 the Apex Court had laid down certain criteria and directions for disposal of the criminal cases in view of the piling up of cases in the lower Courts and in the said case of AIR 1996 SC 1619 in para 4, the Apex Court had laid down that the directions given in the said case were not applicable to certain cases and offences and in the said para 4, the "economic offences" were one of the "exceptional offences". It was contention of the present applicant before the learned Metropolitan Magistrate as

well as before this Court that the offence punishable u/s 138 of the Negotiable Instruments Act was an economic offence. The said contention was accepted by the learned Metropolitan Magistrate but this Court had considered the provisions of Sections 138 to 142 of the Negotiable Instruments Act as well as the provisions of the Economic Offences (In applicability of Limitations) Act, 1974 and had recorded finding that the offence punishable u/s 138 of the Negotiable Instrument Act will not amount to an economic offence.

4. If the decision of the Apex Court in the case of Common Cause A Regd. Society Vs. U.O.I. and Others, is carefully read, then it would be quite clear that the said finding recorded by this Court is nowhere reversed or negated by the Apex Court. But apart from this, the said judgment of Common Cause A Regd. Society Vs. U.O.I. and Others, is by way of giving clarification as well as adding certain offences in the para No. 4 of the judgment given in AIR 1996 SC 1619 . That would be quite clear from the following observations made in the said case of Common Cause A Regd. Society Vs. U.O.I. and Others, . The said decision begins with para No. 1 as under: (at page No. 1302 of GLR)

We have heard learned Counsels appearing for the concerned parties in the present proceedings. Having given our anxious consideration to their contentions, we deem it fit to clarify/modify our judgment dated 1st May, 1996 in Writ Petition (C) No. 1128 of 1986 reported in 1996 AIR SCW 2279 which is equivalent to AIR 1996 SC 1619.

Then in para 3 of the case reported in Common Cause, A Registered Society Through its Director Vs. Union of India and others, it has been observed as under: (at page No. 1303 of GLR)

In paragraph 4 of our judgment in the list of offences to which directions contained in paragraphs 1 and 2 shall not apply, the following additions shall be made:

(n) Matrimonial offences under Indian Penal Code including Section 498-A under any other law for the time being in force; (o) offences under the Negotiable Instruments Act including offences u/s 138 thereof; (p) offences relating to criminal misappropriation of property of the complainant as well as offences relating to criminal breach of trust under Indian Penal Code or under any other law for the time being in force; (q) offences u/s 304-A of the Indian Penal Code or any offence pertaining to rash and negligent acts which are made punishable under any other law for the time being in force; (r) offences affecting the public health, safety, convenience, decency and morals as listed in Chapter XIV of the Indian Penal Code or such offences under any other law for the time being in force.

In the said added offences, offence under Negotiable Instruments Act including offence punishable u/s 138 is at serial (o). Therefore, from the above observations of the Apex Court, it would be quite clear that the Apex Court has by its judgment of Common Cause, A Registered Society Through its Director

Vs. Union of India and others, has given clarification and modification and has added the offences punishable u/s 138 of the Negotiable Instruments Act as an offence to which the directions given in paragraphs 1 and 2 of the earlier decision of AIR 1996 SC 1619 are not to be applicable. Therefore, it would be quite clear that the Supreme Court has nowhere laid down that the offence punishable u/s 138 of the Negotiable Instruments Act is an economic offence.

5. It is also settled law that a decision of the Court could not be reviewed on account of the subsequent pronouncement of the superior Court. No doubt, in Common Cause, A Registered Society Through its Director Vs. Union of India and others, the Supreme Court has added and made it quite clear that the clarification/modification which the Supreme Court has given in the said decision of Common Cause, A Registered Society Through its Director Vs. Union of India and others, are to be given retrospective effect. That will be quite clear from the following paragraph: (at page No. 1303 of GLR)

It is further directed that in criminal cases pertaining to the offences mentioned under the above additional categories (n) to (r) wherein accused are already discharged or acquitted pursuant to our judgment dated 1st May 1996 and they are liable to be proceeded against for such offences pursuant to the present order and are not entitled to be discharged or acquitted as aforesaid, the concerned criminal Court shall suo motu or on application by the concerned aggrieved parties shall issue within three months of the receipt of this clarificatory order at their end, summons or warrants, as the case may be, to such discharged or acquitted accused and shall restore the criminal cases against them for being proceeded further in accordance with law.

6. The above directions given by the Apex Court are, no doubt, binding against not only the Magistrates but against also this Court. The said directions are given by the Supreme Court by exercising powers under Article 142 of the Constitution and the powers under the Article 142 of the Constitution are wide and there could not be any restrictions or prohibitions in exercising the same. Therefore, those powers exercised by the Supreme Court will be binding on this Court as well as on the Magistrates. But as quoted above, what has been directed by the Apex Court is that the Criminal Courts, which are to try the accused and the cases in which the accused are discharged or acquitted on account of the decision of the Apex Court in AIR 1996 SC 1619 : 1997(2) GLR 1297 are to be resummoned or brought before them by issue of warrant and proceed further trial according to law.

7. It must be also mentioned that if the provisions of Section 362 of the Code of Criminal Procedure are considered, then it would be quite clear that once a criminal Court signs a judgment, the criminal Court has no jurisdiction to review the same. Once a judgment has been pronounced by a High Court either in exercise of its appellate or its revisional jurisdiction, no review or revision can be entertained against that judgment as there is no provision in the Code which would enable the High Court to review the same or to exercise revisional

jurisdiction. (See State of Orissa Vs. Ram Chander Agarwala and Others, and Moti Lal Vs. State of Madhya Pradesh, .

8. Therefore, in view of the above Moti Lal Vs. State of Madhya Pradesh, Considerations, it would be quite clear that the present review application is not tenable in law. But as stated earlier, the directions given by the Apex Court in para 4, which are quoted above by me, are binding against the criminal Courts. Therefore, in view of the said directions issued by the Apex Court, the learned Metropolitan Magistrate who was to try the present respondent No. 1 will have to take appropriate steps by issuing summons to the respondent No. 1 and then to proceed further as directed by the Apex Court in .

9. Learned Advocate for respondent No. 1 vehemently urged before me that the present respondent No. 1 has also got other grounds for seeking his discharge in the said matter and that they were also submitted before the Common Cause A Regd. Society Vs. U.O.I. and Others, is Court and for that purpose he drew my attention to the para 10 of my judgment. But the contention raised by the respondent No. 1 before this Court was on the basis of the decision of the Apex Court in AIR 1996 SC 1619 : 1997(2) GLR 1297 and this Court had exercised the powers u/s 482 of the Code of Criminal Procedure and had quashed the said criminal prosecution only on the ground of the decision of the Apex Court reported in AIR 1996 SC 1619 : 1997(2) GLR 1297 and this Court had not considered and decided the other contentions raised by respondent No. 1 before this Court. It would be open for respondent No. 1 on his appearance before the learned Magistrate to file a detailed application if he has got any claim or cause for seeking discharge of him. When he files such an application, the learned Magistrate will have to decide the same by speaking order according to law after giving opportunity to both the sides of being heard.

10. In the case reported in Common Cause A Regd. Society Vs. U.O.I. and Others, the Apex Court had directed to circulate copy of the said judgment to all the subordinate Courts. But it seems that the said judgment is not yet circulated to them. But this Court had directed that the judgment delivered by this Court in this case on 3rd October, 1996 holding that the offence punishable u/s 138 of the Negotiable Instruments Act is not an economic offence be circulated to all the subordinate Courts. Therefore, it would be just and proper to circulate this judgment to all the subordinate Courts because in view of the modified judgment of the Supreme Court. The offence punishable u/s 138 of the Negotiable Instruments Act even though not an economic offence has been added in the category of the offences which are enumerated in para 4 of the original judgment of for which the directions given in paragraphs 1 and 2 of the said judgment are not made applicable. Therefore, in view of this modification and addition of the additional offences numbered as (n) to (r), it is necessary to bring the said fact to the notice of all the subordinate Courts. I, therefore, direct that this judgment should also be circulated to all the subordinate Courts.

11. It is also necessary to mention here that as directed Common Cause A Regd.

Society Vs. U.O.I. and Others, by the Apex Court, it is the duty of the criminal Courts which are to try the offenders to issue summons/warrants, as the case may be, if they happened to be discharged on account of relying on the earlier decision of the Apex Court reported in Common Cause A Regd. Society Vs. U.O.I. and Others, and to proceed to try them according to law. It is not necessary that the complainant must move the Court.

12. Therefore, in the circumstances, the learned Metropolitan Magistrate/Magistrates will have to take appropriate action as per the directions issued by the Supreme Court as reported in Common Cause A Regd. Society Vs. U.O.I. and Others, . This application stands disposed of accordingly. Rule is discharged.