

(2023) 07 GUJ CK 0028

In the Gujarat High Court

Case No : R/Special Criminal Application No. 8250 Of 2023

Rajesh Sharma S/O Late Ramji Lal Sharma

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-07-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 389, 389(3)
Negotiable Instruments Act, 1881 — Section 138, 139, 148

Citation : (2023) 07 GUJ CK 0028

Hon'ble Judges : Samir J. Dave, J

Bench : Single Bench

Advocate : Krunal K Modi, JK Shah

Final Decision : Dismissed

Judgement

Samir J. Dave, J

1. By way of present application, applicant has requested to quash and set aside the order dated 03.06.2023 passed by learned 8th Additional Sessions Judge, Surat in Criminal Appeal No. 325 of 2023 directing the applicant to deposit 10% of the compensation/fine amount within 60 days and to modify the impugned order by waiving off/deleting the condition no.2 to surrender the passport in the court.

2. Brief facts of the present case are as under:

2.1 That, in connection with the complaint filed under the provisions of the NI Act, the matter being Criminal Case No. 24077 of 2016 was finally heard and put up for pronouncement of judgment on 02.02.2023, on which date, the judgment as well as the order of sentence was passed, in the absence of the accused/applicant declining the exemption application filed by the applicant and thereafter, as against the said order, the applicant approached the learned Sessions Court by way of Criminal Revision Application No. 58 of 2023 but the said application was partly rejected vide order dated 20.02.2023 by learned 5th

Additional Sessions Judge, Surat directing that the applicant shall appear in person before the concerned trial court along with his advocate and it will be open for him to file a fresh application under Section 389(3) of the CrPC for provisional bail and in this connection, the applicant was remained present before the concerned trial court on 18.03.2023 and filed afresh application under Section 389 of CrPC seeking suspension of sentence but the said application of the applicant was rejected vide order dated 18.03.2023 and applicant was taken into the custody vide order dated 18.03.2023 passed by learned Special Judge, NI Act, Surat.

2.2 Thereafter, the applicant approached the learned Sessions Court, Surat vide Criminal Revision Application No. 93 of 2023 against the said order dated 18.03.2023 as well as filed bail application being Criminal Misc. Application No. 2188 of 2023 and both of these applications were decided vide common order dated 18.03.2023 by learned 8th Additional Sessions Judge, Surat and granted bail to the applicant.

2.3 Thereafter, the applicant filed an appeal against the conviction order and sought suspension of sentence with delay condonation application, wherein the delay condonation application was allowed vide order dated 02.05.2023 and thereafter the applicant made an application under Section 389 of CrPC requesting to suspend the sentence and application seeking waiver to deposit the minimum 20% in terms of Section 148 NI Act and vide order dated 03.06.2023, learned first Appellate Court was pleased to suspend the sentence of the applicant till pendency of such appeal with certain conditions wherein one condition is to surrender his passport or execute an affidavit declaring that he does not hold a passport within 7 days from the date of this order and one other condition is that in view of Section 148 of the Negotiable Instruments Act, the appellant is further directed to deposit 10% of the fine/compensation imposed by the learned trial court within 60 days from the date of this order and by way of this application, the applicant has sought relief to quash and set aside so far these conditions are concerned.

3. Heard learned advocate for the applicant.

4. It was submitted by learned advocate for the applicant that the learned trial court has incorrectly convicted the applicant under Section 138 of the NI Act and the applicant was incorrectly and unjustifiably directed to pay twice the cheque amount of Rs. 80 lacs to the respondent no.2. That, on perusal of the evidence on record clearly demonstrated that the presumption under Section 139 of the Act stood rebutted and thereafter the complainant failed to discharge the onus to prove his case beyond reasonable doubt. That, during the course of cross examination of CW-1 admitted the alterations made there in and also that the same is done by different ink and also that this new alteration does not bear any counter signatures of the applicant herein.

5. It was further submitted by learned advocate for the applicant that learned

Sessions Judge did appreciate the merits of the matter but did not completely waive the fine/compensation amount and instead of 20% gave direction to deposit 10% of the compensation/fine amount and thus, 20% of the fine/compensation was ought to have been waived and not merely 10% of the compensation/fine amount. That the direction of depositing the passport in court is excessive in the given facts and circumstances, which would cause enormous hardship to the applicant in matter of his traveling abroad for personal and professions reasons. Ultimately, it was submitted by learned advocate for the applicant to allow present application.

6. Having heard learned advocate for the applicant and considering the averments made in this application, it appears that while suspending the sentence of the applicant, the learned Sessions Judge has imposed certain conditions out of which one is of to deposit the passport and another is to deposit 10% of the cheque amount towards the fine/compensation and as against such order, the applicant has approached this court.

7. It appears from the conviction order passed by the learned trial court that as per submission of the prosecution, the cheque amount is of rupees one crore sixty lacs and after arriving at the compromise, the cheque has been issued and except the recording FS, the accused was not remained present. Not only that on the date of pronouncement of judgment of conviction, the applicant or his advocate was not remained present.

8. During the course of arguments of learned advocate for the applicant, this court specifically asked learned advocate for the applicant about any willingness of the applicant to deposit any amount but learned advocate for the applicant has stated that the applicant is not in a capacity to deposit any amount.

9. Thus, it appears from the aforesaid discussion that after conducting fulfleged trial, learned trial court has convicted the applicant by holding him guilty and on the day of pronouncement of judgment, the applicant was not present before the court.

10. While considering the established provisions of law and especially provisions of NI Act, this court is of the view that the learned trial court has not committed any error or mistake in passing order of directing the applicant to deposit 10% fine/compensation amount as well as deposit the passport.

11. Thus, present application of the applicant stands rejected at the admission stage without issuing any notice to the otherside. The order dated 03.06.2023 passed by learned 8th Additional Sessions Judge, Surat in Criminal Appeal No. 325 of 2023 stands confirmed.