
(2011) 11 GUJ CK 0089
In the Gujarat High Court

Case No : Criminal Revision Application No. 494 of 2011

Shrenikbhai K Sheth

APPELLANT

Vs

State of Gujarat and 1

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138, 147

Citation : (2011) 11 GUJ CK 0089

Hon'ble Judges : MD Shah, J

Bench : Single Bench

Advocate : MR UI Vyas for Mr AM Parekhs, for the Appellant; LR Pujari, APP for Respondent(s) : 1 and Mr. Vaibhav Sheth for Respondent(s) : 2, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice MD Shah

1. Learned advocate, Mr.Vaibhav Sheth ispermitted to file Vaklatnama on behalf of the respondent No. 2.
2. Rule.Learned APP, Mr.L.R. Pujari and learned advocate, Mr. Vaibhav Sheth, waive service of rule on behalf of the respondent Nos.1 and 2 respectively.
3. Theapplicant-accused was convicted for the offences punishable u/s 138 of the Negotiable Instruments Act by the judgment and order dated 15-3-2010 passed in Criminal Case No. 7194 of 2009 by the learned Metropolitan Magistrate (NI Act), Court No. 4, Ahmedabad, and the applicant-accused was sentenced to suffer simple imprisonment for one year and to pay fine of Rs. 5,000/-, in default, to suffer SI for three months.
4. Being aggrieved and dissatisfied with the said judgment and order, the applicant accused preferred Criminal Appeal before the learned City Session Judge, Ahmedabad. However, it was dismissed vide judgment and order dated

15-3-2011 passed in Criminal Appeal No. 158 of 2010 by the learned Addl. Sessions Judge, Ahmedabad City.

5. Both the aforesaid judgments and orders are under challenge by the applicants in the present Criminal Revision Application.

6. It has been submitted by the learned Counsel, Mr. Vyas for the applicant that the matter is settled between the parties. Complainant is present in Court, is identified by learned advocate, Mr. Vaibhav Sheth as the original complainant. It has been specifically stated by the complainant that the applicant-original accused has paid the amount in cash to him. Receipt issued by the complainant produced by learned advocate for the petitioner is taken on record. He has also stated that now he has no grievance against the applicant-accused. The complainant has also stated before this Court that the matter is settled between the parties and now he has no grievance against the applicant-accused. Settlement pursis produced by the learned advocate, Mr. Vyas is ordered to be taken on record.

7. It is to be noted that the matter is settled between the parties and the accused has paid the amount to the complainant. In view of the settlement pursis and the receipt showing that the entire amount has been paid by the accused in cash to the respondent No. 2-complainant, this court is of the opinion that the parties be permitted to compound the offence.

8. The Apex Court in the case of Vinay Devanna Nayak Vs. Ryot Seva Sahakari Bank Ltd., has observed as under in paras 17 18 of the judgment:

17. As observed by this Court in M/s. Electronics Trade and Technology Development Corpn. Ltd., Secunderabad Vs. M/s. Indian Technologists and Engineers (Electronics) Pvt. Ltd. and another, the object of bringing Section 138 in the statute book is to inculcate faith in the efficacy of banking operation and credibility in transacting business on negotiable instruments. The provision is intended to prevent dishonesty on the part of the drawer of negotiable instruments in issuing cheques without sufficient funds or with a view to inducing the payee or holder in due course to act upon it. It thus seeks to promote the efficacy of banking operations and ensures credibility in transacting business through cheques. In such matters, therefore, normally compounding of offences should not be denied. Presumably, Parliament also realized this aspect and inserted Section 147 by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 (Act 55 of 2002)." "18. Taking into consideration even the said provision (Section 147) and the primary object underlying Section 138, in our judgment, there is no reason to refuse compromise between the parties. We therefore dispose of the appeal on the basis of the settlement arrived at between the appellant and the respondent.

9. Applying the ratio of the aforesaid decision of the Apex Court to the facts of the present case, I am of the opinion that this Revision Application is required to be allowed and the parties be permitted to compound the offence.

10. In the result, the Revision Application is allowed. The judgment and order of conviction and sentence dated 15-3-2010 passed in Criminal Case No. 7194 of 2009 by the learned Metropolitan Magistrate (NI Act), Court No. 4, Ahmedabad, as also the judgment and order dated 15-3-2011 passed in Criminal Appeal No. 158 of 2010 by the learned Addl. Sessions Judge, Ahmedabad City, dismissing the same are hereby quashed and set aside. The parties are permitted to compound the offence and the accused is acquitted. Fine paid by the applicant-accused be treated as costs towards the Government and it will not be refunded back to the accused. Direct service is permitted.