

(2022) 02 GUJ CK 0041
In the Gujarat High Court

Case No : R/Criminal Revision Application No. 57 Of 2022

Vaghari Rohitbhai Jenabhai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 10-02-2022

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138
Negotiable Instruments (Amendment And Miscellaneous Provisions) Act, 2002 —
Section 147

Citation : (2022) 02 GUJ CK 0041

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

Bench : Single Bench

Advocate : Kamlesh S Kotai, Alpesh N Gadhavi, MH Bhatt, Rajdeepsinh R Joddha

Final Decision : Allowed

Judgement

B.N. Karia, J

Rule returnable forthwith. Learned advocate Mr. Rajdeepsinh R. Joddha waives service of notice of rule for and on behalf of the respondent no.2 and

learned APP waives service of notice of rule for and on behalf of the respondent no.1.

By way of present application, the applicant has challenged the judgment and order dated 15.02.2020 passed in Criminal Case No. 322 of 2018 by

learned 2nd Additional Chief Judicial Magistrate, Mahesana as well as judgment and order dated 25.11.2021 passed in Criminal Appeal No. 50 of

2021 by learned Sessions Judge, Mahesana.

Today, when the matter was taken up for hearing, a joint submission was made by learned advocates for the respective parties that dispute between

the parties is settled amicably. Learned advocate for the respondent no.1

submits that full and final settlement has been arrived at between the parties and respondent no.1 has no objection if the orders passed by the courts below would be quashed and set aside. An Affidavit filed by the respondent no.2 is taken on record.

Learned APP for the respondent State has requested to pass necessary order in this matter.

Today, on a request being made by learned advocate for the respondent no.2, respondent no.2 was permitted to appear before this court through video conferencing and while making inquiry, he submits that he is authorized legal officer of the Mahindra and Mahindra finance Service and in this regard, the company has given him power of attorney. On the basis thereof, he has also filed affidavit also. He also submits before this court that the applicant had paid up his outstanding loan amount and dispute between the parties is amicably settled, thus he does not want to proceed further with the prosecution initiated by them.

Learned advocate for the respondent no.2 has identified the respondent no.2 as well as his signature in the affidavit filed by the respondent no.2 and has confirmed the fact about settlement arrived at between the parties.

Having considered the facts of the case and submissions made by learned advocates for the respective parties as well as learned APP for the respondent-State and considering the facts of the affidavit filed by the respondent no.1, it appears that the dispute is settled amicably between the parties and respondent no.2 has received outstanding loan amount.

Relevant paras of the affidavit filed by the respondent no.2 are as under:

4. I respectfully state and submit that the applicant herein had paid up his outstanding loan amount and disputes between the parties are amicably settled. Therefore, the respondent no.2 herein does not want to proceed further with the prosecution initiated by them.

5. I respectfully state and submit that the prosecution initiated by the respondent no.2 herein is private in nature and as both the parties have amicably settled the dispute. Therefore, the present Criminal Revision Application may be allowed by this Honâble Court with the consent of Respondent no.2 herein.

6. I further state and submit that respondent no.2 has no objection if the

judgment dated 15.02.2020 passed in Criminal Case No. 322 of 2018 by the learned 2nd Additional Judicial Magistrate, Mahesana and judgment dated 25.11.2021 passed in Criminal Appeal No. 50 of 2021 by the learned Sessions Judge, Mahesana may be quashed and set aside by this Honâ??ble Court. â??

The Apex Court in the case of Vinay Devanna Nayak V/s Ryot Seva Sahakari Bank Ltd. reported in AIR 2008 SC 716 has observed as under in paras 17 and 18 of the judgment :

â??17. As observed by this Court in Electronic Trade & Technology Development Corporation Ltd. V. Indian Technologists and Engineers, (1996) 2

SCC 739, 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)â??.

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.â??

Applying the ratio of the aforesaid decision of the Apex Court to the facts of the present case as well as considering the settlement arrived at between

the parties and contents of the affidavit filed by the respondent no.2, I am of the opinion that the revision application is required to be allowed and the

parties be permitted to compound the offence.

In the result, present revision application is allowed. The judgment and order dated 15.02.2020 passed in Criminal Case No. 322 of 2018 by learned

2nd Additional Chief Judicial Magistrate, Mahesana as well as judgment and order dated 25.11.2021 passed in Criminal Appeal No. 50 of 2021 by

learned Sessions Judge, Mahesana stand quashed and set aside. The applicant-accused is acquitted of the charge under Section 138 of the Negotiable Instruments Act.

Rule is made absolute to the aforesaid extent.