

(2010) 12 GUJ CK 0119
In the Gujarat High Court

Case No : Criminal Revision Application No. 628 of 2010

Vimalchand Jain

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 29-12-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357(3)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2010) 12 GUJ CK 0119

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : Parthiv A. Bhatt, for the Appellant; L.R. Pujari, Assistant Public Prosecutor for Respondent 1 and Ankur Y. Oza, for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—RULE. Mr. L.R. Pujari, learned Additional Public Prosecutor waives the service of notice of rule on behalf of the Respondent No. 1 and Mr. Ankur Oza, learned advocate waives the service of notice of rule on behalf of the Respondent No. 2.

2. In the facts and circumstances of the case and with the consent of the learned advocates appearing on behalf of the respective parties and as the parties have settled the dispute amicably and they have requested to compound the offence, the present Criminal Revision Application is taken up for final hearing today.

3. The present Criminal Revision Application has been preferred by the applicant original accused to quash and set aside the impugned judgment and order dated 13/12/2010 passed by the learned City Civil and Sessions Court, Ahmedabad in Criminal Appeal No. 236/2009 as well as the judgment and order dated 10/9/2009 passed by the learned Metropolitan Magistrate, Negotiable Instrument Act Court No. 1, Ahmedabad in Criminal Case No. 569 of 2008, by which the applicant has been convicted for the offence punishable u/s 138 of Negotiable

Instruments Act and is sentenced to undergo one year Simple Imprisonment and further directed to pay a sum of Rs. 2,00,000=00 to the original complainant - Respondent No. 2 by way of compensation u/s 357(3) of the Code of Criminal Procedure.

4. Today, when the present Criminal Revision Application is taken up for hearing, Mr. Vijay Patel, learned advocate appearing with Mr. Parthiv A. Bhatt, learned advocate appearing on behalf of the applicant - original accused has stated at the bar that the applicant has already deposited a sum of Rs. 2,30,000=00 with the registry of this Court on 24/12/2010 being the amount of compensation as ordered by the learned trial court confirmed by the appellate court (Rs. 2,00,000=00) and towards costs to permit the applicant to compound the offence for which he is punished u/s 138 of Negotiable Instruments Act being 15% of the cost of the cheque amount, which is required to be paid, as per the decision of the Hon''ble Supreme Court in the case of Damodar S. Prabhu Vs. Sayed Babalal H., . Therefore, it is requested to permit the applicant to compound the offence.

5. In view of the above, the learned advocate appearing on behalf of the respective parties, more particularly Mr. Ankur Oza, learned advocate appearing on behalf of the Respondent No. 2 - original complainant has stated at the bar that Respondent No. 2 - original complainant has no objection if the applicant is permitted to compound the offence for which he is convicted i.e. u/s 138 of the Negotiable Instruments Act and the impugned judgment and order passed by both the courts below are quashed and set aside, on being paid an amount of Rs. 2,00,000=00 to him out of the amount which is already deposited by the applicant - original accused.

6. Mr. Ankur Oza, learned advocate appearing on behalf of the Respondent No. 2 - original complainant has stated at that bar that on receipt of the sum of Rs. 2,00,000=00 towards the cheque amount and amount of compensation/interest, the Respondent No. 2 - original complainant has no objection if the applicant is permitted to compound the offence, for which he has been convicted for the offence punishable u/s 138 of Negotiable Instruments Act and impugned judgment and orders passed by both the courts below are quashed and set aside.

7. In view of the aforesaid facts and circumstances of the case, when the parties have settled the dispute and the amount due and payable under the cheque in question with interest/compensation has been deposited by the applicant to be paid to the Respondent No. 2 - original complainant, and that the applicant has also deposited a further sum of Rs. 30,000=00 towards costs, so as to enable and permit the applicant to compound the offence, considering the decision of the Hon''ble Supreme Court in the case of DAMODAR S. PRABHU (supra), the applicant is permitted to compound the offence u/s 138 of Negotiable Instruments Act, for which he has been punished and convicted. Present Criminal Revision Application is allowed and the impugned judgment and order dated 13/12/2010 passed by the learned City Civil and Sessions Court, Ahmedabad in

Criminal Appeal No. 236/2009 as well as the judgment and order dated 10/9/2009 passed by the learned Metropolitan Magistrate, Negotiable Instrument Act Court No. 1, Ahmedabad in Criminal Case No. 569 of 2008, are hereby quashed and set aside. Consequently, the applicant - original accused is ordered to be set as liberty forthwith, if he is in jail and if not required in any other case.

8. The Respondent No. 2 - original complainant is hereby permitted to withdraw a sum of Rs. 2,00,000=00 (Rupees Two Lacs only) out of amount of Rs. 2,30,000=00 deposited by the applicant, reported to have deposited on 24/12/2010 and Registry is directed to pay the same to the Respondent No. 2 - original complainant by Account Payee Cheque, on proper verification, at the earliest and remaining amount of Rs. 30,000=00 which has been deposited by the applicant towards the cost so as to enable and permit the applicant to compound the offence, Registry is directed to transmit the same to the Gujarat High Court Legal Services Authority at the earliest. Consequently, the applicant - original accused is ordered to be set as liberty forthwith, if he is in jail and if not required in any other case.

9. Rule is made absolute accordingly.

10. Direct Service is Permitted.