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2022 (0) AIJEL-HC 243888

GUJARAT HIGH COURT

Hon'ble Judges:Vipul M.Pancholi, J.

Nishantbhai Mukeshbhai Shah Versus State Of Gujarat

SPECIAL CRIMINAL APPLICATION No. 697 of 2022 ; *J.Date :- FEBRUARY 01, 2022

- CODE OF CRIMINAL PROCEDURE, 1973 Section - 482
- NEGOTIABLE INSTRUMENTS ACT, 1881 Section - 138 , 147

Code of Criminal Procedure, 1973 - S. 482 - Negotiable Instruments Act, 1881 - S. 138, 147 - dishonour of cheque - conviction - compounding of offence - quashing of complaint on the basis of compromise - amicable settlement has been arrived at between the parties - complainant has filed an affidavit stating that if order of conviction passed against applicant is quashed and set aside, he has no objection - held, it would be permissible for High Court in exercise of its inherent powers u/s. 482 of the Code, to record the settlement arrived at between the parties and acquit the accused of the charges - compounding of offence is permitted - impugned order of conviction quashed and set aside - petition allowed.

Imp.Para: [8] [9] [10] [11] [12]

Cases Relied on :

1. Damodar S.Prabhu Vs. Sayed Babalal H., 2010 5 SCC 663 : 2010 (3) GLR 2042 : 2010 (25) GHJ 229 : 2010 CrLJ 2860 : 2010 (4) Scale 568
2. Khokhar Iliyas Bismilla Khan V/s. State Of Gujarat, 2021 2 DCR 702 : 2021 (3) Crimes(HC) 65 : 2022 (1) RCR(Cri) 421 : 2021 ACD 767 : 2021 JX(Guj) 173

Equivalent Citation(s):
2022 (1) DCR 528 : 2022 JX(Guj) 218
JUDGMENT :-

1 With the consent of learned advocates appearing for the parties, present application is taken up for final disposal today.

2 Learned advocate Ms. Laxa Bhavnani states that she has received instructions to appear on behalf of respondent No.2. She is permitted to file her Vakalatnama in the Registry. Registry to accept the same.

3 Rule. Learned APP Mr. L.B. Dabhi for respondent no.1 and learned advocate, Ms. Laxa Bhavnani for respondent no.2 waive service of notice of Rule.

4 By way of the present application under Section 482 of the Code of Criminal Procedure, 1973 (for short, the Code), the applicant prays for quashing and setting aside the judgment and order dated 05.01.2022 passed by the learned Chief Judicial Magistrate, Morbi in Criminal Case No.4724 of 2019, by which, the present applicant accused has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to suffer simple imprisonment for a period of one year and also directed him to pay double compensation, failing which, to undergo 90 days simple imprisonment.

5 Heard learned advocate, Mr. Aftabhusen Ansari for the applicant, learned APP Mr. L.B. Dabhi for respondent no.1 and learned advocate, Ms. Laxa Bhavnani for respondent No.2.

6 At this state, learned advocate for the applicant submitted that now the dispute is amicably settled with respondent No.2 complainant. Learned advocate for the applicant has also referred the affidavit of the complainant filed before this Court, a copy of which is placed on record at Page No.27 of the compilation. It is, therefore, urged that the impugned judgment be quashed and set aside on the ground of settlement arrived at between the parties.

7 Learned advocate for the applicant has placed reliance upon the decision rendered by the Honourable Supreme Court in the case of Damodar S. Prabhu Vs. Sayed Babalal H. reported in (2010) 5 SCC 663 and the order dated 06.05.2021 passed by this Court in Criminal Misc. Application No.18712 of 2020 (Khokhar Iliyas Bismilla Khan Vs. State of Gujarat & Anr.). Having relied on the said decisions, learned advocate for the applicant urged that compounding of offence is permissible even after the conviction under Section 138 of the N.I. Act on certain conditions.

8 On the other hand, learned advocate Ms. Laxa Bhavnani also submitted that a settlement is arrived at between the parties and the complainant is also present in her office. When inquired, he has stated that if the impugned judgment is quashed and set aside, he has no objection. Learned advocate Ms. Bhavnani has identified him and confirmed the factor of settlement between the parties.

9 Having heard learned advocates appearing for the parties and having gone through the material placed on record, it has emerged that the applicant has been convicted by the concerned Criminal Court for the offence punishable under Section 138 of the N.I. Act. However, now, the parties have amicably settled the dispute and, therefore, the complainant has filed an affidavit stating that if the order of conviction passed against the applicant is quashed and set aside, he has no objection.

10 This Court, in the case of Khokhar Iliyas Bismilla Khan Vs. State of Gujarat & Anr. (supra), had an occasion to deal with a similar issue which is involved in the present matter. The observations made in Paragraphs-16 and 16.2 of the said decision are as under:

> 16. Applying the ratio of various decisions by this Court and the Apex Court as well as in view of the guidelines as laid down in the case of Damodar S. Prabhu (Supra) as also considering the object of Section 138 of the NI Act, which is mainly to inculcate faith in the efficacy of banking operations and credibility of transacting business through cheque as also taking into account the provisions of Section 147 which states that every offence punishable under this Act shall be compoundable. Further, it is mainly a transaction between the private parties where the State is not affected.
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> 16.1 xxx xxx xxx
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> 16.2. Generally the powers available under Section 482 of the Code would not have been exercised when a statutory remedy under the law is available, however considering the peculiar set of facts and circumstances it would not be in the interest of justice to relegate the parties to appellate court. Additionally when both the parties have invoked the jurisdiction of this Court and there is no bar on exercise of powers and the inherent powers of this court can always be invoked for imparting justice and bringing a quietus to the issue between the parties and hence, the present application is entertained.

11 In the case of Damodar S. Prabhu Vs. Sayed Babalal H. (supra), the Honourable Supreme Court has issued guidelines in Para-21, relevant portion of which, reads as under:

> The Guidelines:- (i) In the circumstances, it is proposed as follows:
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> (a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.
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> (b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the Legal Services Authority, or such authority as the Court deems fit.
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> (c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.
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> (d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount.

12 Keeping in view of the aforesaid decision rendered by the Hon ble Supreme Court and the order passed by this Court, I am of the view that when the parties have settled the dispute amicably, compounding of the offence is required to be permitted. However at this stage, it is required to be noted that the respondent no.1 has filed a complaint under Section 138 of the N.I. Act for dishonour of cheque amounting to Rs.17,53,846/-

and, hence as per the decision rendered by the Hon ble Supreme Court, as the cheque amount is huge, suitable amount is required to be deposited by the applicant with the Gujarat State Legal Services Authority, more particularly when the complainant has shown willingness to accept amount by way of settlement.

13 Accordingly, the petition is allowed. The impugned judgment and order of conviction dated 05.01.2022 passed by the learned Chief Judicial Magistrate, Morbi in Criminal Case No.4724 of 2019 is quashed and set aside. The petitioner is permitted to deposit 10% of Rs.17,53,846/- within a period of four months from the date of receipt of a copy of this order with the Gujarat State Legal Services Authority. On production of receipt of the deposited amount as directed, the present order will be given an effect.

14 Rule is made absolute to the aforesaid extent. Direct service is permitted.